TEXAS REGISTER

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Tony Bloom
12th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for July 26, 2005

Appointed to the Governor's Advisory Council on Physical Fitness for a term at the pleasure of the Governor, Elizabeth Gonzalez of San Antonio (replacing Lynden Rose who resigned).

Appointed to the Governor's Advisory Council on Physical Fitness for a term at the pleasure of the Governor, Eric Scott Kubitz of El Paso (replacing Davie Johnson who resigned).

Appointed to the Governor's Advisory Council on Physical Fitness for a term at the pleasure of the Governor, Fabrizio Mancini, D.C. of Irving (replacing Jose Gonzalez who resigned).

Appointed to the Interstate Mining Compact Commission for a term at the pleasure of the Governor, Commissioner Michael Williams of Austin (replacing Charles Matthews).

Appointments for August 1, 2005

Designating Neal W. Adams of Euless as Vice-Chairman of the Texas Higher Education Coordinating Board for a term at the pleasure of the Governor. Mr. Adams is replacing Robert Shepard as Vice-Chairman. Mr. Shepard has been designated Chairman.

Rick Perry, Governor

TRD-200503312

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Executive Order

RP 46

Relating to the consolidation of functions pertaining to the maintenance and construction of Texas National Guard facilities and the payment of debt service on existing obligations.

WHEREAS, the Texas Adjutant General's Department and the Texas Military Facilities Commission currently perform construction and maintenance functions in support of the Texas National Guard; and

WHEREAS, these overlapping functions present the opportunity for the State of Texas to improve upon the efficiency of its government; and

WHEREAS, the Texas National Guard is facing an historic reorganization of its facilities due to the current base realignment and closure process; and

WHEREAS, it is the intent of the Governor and in the best interests of the State of Texas that the functions of the Texas Military Facilities Commission be continued within the Adjutant General's Department; and

WHEREAS, pursuant to Article IV, Section 14 of the Texas Constitution, the 2006-2007 line item appropriations of the Texas Military Facilities Commission contained in Senate Bill No. 1, 79th Texas Legislature, Regular Session, were disapproved and vetoed; and

WHEREAS, the 2006-07 rider appropriations of the Texas Military Facilities Commission were properly approved and not vetoed so that all debt service obligations of the Commission could be paid and all locally held funds and funds derived from the sale of property could be used to enter into an interagency agreement with the Adjutant General's Department to perform necessary functions;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Revenue Bonds. The Texas Military Facilities Commission shall use all rent payments received from the Adjutant General's Department and appropriated by Rider No. 5, Bond Indenture Revenues in Article V of Senate Bill No. 1, 79th Texas Legislature, Regular Session, to meet its obligations under outstanding bond covenants.

The commission shall work with the Office of the Governor, Legislative Budget Board, Texas Public Finance Authority, and the Adjutant General's Department on a plan to transfer responsibility for these existing obligations to the Texas Public Finance Authority.

Interagency Agreement. The Adjutant General's Department shall develop an interagency agreement with the Texas Military Facilities Commission whereby the Department will agree to provide administrative support to the Commission, undertake maintenance projects identified by the Commission, and pay personnel costs associated with those projects.

Funding. The Commission shall use all funds appropriated by rider, including locally held funds, for facility maintenance, repair, and renovation, for the purpose of entering into the interagency agreement specified above to carry out these functions.

Future Projects. The Texas Adjutant General's Department shall develop a proposal for approval by the Office of the Governor and the Legislative Budget Board on how existing funds held outside of the treasury can be used to address the future critical needs of the Texas National Guard armories.

Interim Report. The Texas Adjutant General's Department and the Military Facilities Commission will collaborate to produce and submit a proposal to the Office of the Governor, the Legislative Budget Board, and the Sunset Advisory Commission related to how the two agencies can best be statutorily consolidated.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 3rd day of August, 2005.

Rick Perry, Governor

TRD-200503311

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0366-GA

Requestor:

The Honorable Lawrence F. Harrison

Kimble County Attorney

Post Office Box 385

Junction, Texas 76849

Re: Whether a deputy sheriff is an "employee of the permitting authority" for purposes of 30 T.A.C. section 285.50(g), which prohibits such persons from working as an installer for an on-site sewage facility (RQ-0366-GA)

Briefs requested by September 2, 2005

RQ-0367-GA

Requestor:

Mr. James Chastain, President

Bandera County River Authority and Groundwater District

Post Office Box 177

202 Twelfth Street

Bandera, Texas 78003

Re: Qualifications for members of the board of the Bandera County River Authority and Groundwater District (RQ-0367-GA)

Briefs requested by September 3, 2005

RQ-0368-GA

Requestor:

The Honorable Robert Duncan

Chair, Committee on State Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a police chief may simultaneously serve as a trustee of an independent school district located within the city (RQ-0368-GA)

Briefs requested by September 9, 2005

RQ-0369-GA

Requestor:

Shirley J. Neeley, Ed.D.

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether a school district employee may administer corporal punishment under a disciplinary policy adopted by the board of trustees (RQ-0369-GA)

Briefs requested by September 9, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200503313
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: August 9, 2005

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Opinions

Opinion No. GA-0344

The Honorable James M. Kuboviak

Brazos County Attorney

Brazos County Courthouse

300 East 26th Street, Suite 325

Bryan, Texas 77803-5327

Re: Whether a bail bond board may consider an individual bail bond surety's former license in determining the applicable bail bond limit under section 1704.203(f) of the Occupations Code (RQ-0315-GA)

S U M M A R Y

A bail bond board may not consider an individual bail bond surety's former license or a license issued by a bail bond board in another county in determining the applicable bail bond limit under section 1704.203(f) of the Occupations Code. The number of years a person held a former

license may not be used to determine when the person's current license expires under section 1704.162.

Opinion No. GA-0345

The Honorable William E. Parham

Waller County Criminal District Attorney

836 Austin Street, Suite 103

Hempstead, Texas 77445

Re: Authority of a county to accept a private road into its county road system under either Local Government Code section 81.032 or Transportation Code section 252.214 (RQ-0316-GA)

S U M M A R Y

The Waller County Commissioners Court must follow the procedures outlined in Transportation Code chapter 253 or 281 to bring a private road located in Waller County into its county road system before it can accept donations for maintaining that road under Local Government Code section 81.032 or Transportation Code section 252.214.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200503319
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: August 10, 2005

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. QUALITY ASSURANCE FEE

1 TAC §352.10

The Texas Health and Human Services Commission adopts new §352.10, concerning a quality assurance fee for the Home and Community-Based Services and the Community Living Assistance and Support Services waivers, on an emergency basis. Elsewhere in this issue of the *Texas Register* the Commission contemporaneously proposes §352.10 for permanent adoption. Section 352.10 will become effective on September 1, 2005.

Section 352.10 is adopted on an emergency basis to give effect to the requirements of Senate Bill 1830, Sec. 1, 79th Legislature, R.S. (2005), which became effective on June 17, 2005. Senate Bill 1830 directs the Commission to impose a quality assurance fee under the home and community services and community living assistance and support services waivers. The quality assurance fee will be assessed at up to 6 percent of revenues received by providers operating these programs for both Medicaid and private clients. The funds collected from the fee will be used as matching funds to support increases in Medicaid payments. This emergency adoption also revises the title of Chapter 352 to reflect the inclusion of the identified waiver services into the quality assurance fee program.

Section 352.10 is adopted on an emergency basis under Senate Bill 1830, which directs the Commission to modify the quality assurance fee program to add a quality assurance fee for home and community services and community living assistance and support services waivers; Government Code, §531.033, which authorizes the Executive Commissioner to adopt rules necessary to carry out the Commission's duties; Government Code, §531.021, which established the Commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Government Code, §2001.034, which permits emergency rulemaking.

§352.10. Quality Assurance Fee for the Home and Community-based Services and Community Living Assistance and Support Services.

(a) Definitions. The following definitions apply to this section.

(1) Provider. A person or entity that contracts with the Department of Aging and Disability Services (DADS) as a Home and Community-based Services Program Provider, Community Living Assistance and Support Services-Direct Services Agency Provider, or Community Living Assistance and Support Services-Case Management Agency.

(2) Gross receipts. Money received as compensation for services under an intermediate care facilities for the mentally retarded waiver program such as a home and community services waiver or a community living assistance and support services waiver. The term does not include a charitable contribution, revenues received for services or goods other than waivers, or any money received from consumers or their families as reimbursement for services or goods not normally covered by the waivers.

(3) Net operating revenues. Gross receipts less any deducted amounts for bad debts, charity care, and payer discounts.

(4) Units of service. The units of service by rate type and by level of need, where applicable, that were accrued for the reporting period. Units of service that were delivered and not yet billed or paid to the provider are to be included as units of service.

(b) Determination of the fee. The Health and Human Services Commission (HHSC) shall establish the quality assurance fee as a percentage of net operating revenues such that the total of all fees collected does not exceed six percent of the total annual net operating revenues received by providers in the state under the programs identified in subsection (a)(1) of this section. The quality assurance fee amount may be adjusted as necessary for all providers to ensure that the fees collected do not exceed six percent of the total annual net operating revenues received by providers in the state under the programs identified in subsection (a)(1) of this section.

(c) Total monthly fee amount. For each provider, the total monthly fee amount is equal to the percentage determined in subsection (b) of this section times the number of units of service delivered under the programs identified in subsection (a)(1) of this section during the reporting period times the payment rate in effect on the day the unit of service was delivered plus the percentage determined in subsection (b) of this section times the net operating revenues received for private clients during the reporting period.

(d) Monthly reporting. All contracted providers must file a report with DADS in a format prescribed by DADS and in accordance with instructions provided by DADS that includes the accrued units of service delivered to clients under the programs identified in subsection (a)(1) of this section for the reporting period and the net operating revenues received for private clients during the reporting period. A separate report must be completed for each contract held by the provider. The report must be received by DADS no later than 30 calendar days following the end of each month unless the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day for the receipt of the monthly report. Additional reports may be required as needed at the discretion of HHSC.

(e) Payment of the fee. The provider must include with the monthly report submitted from subsection (d) of this section, payment

of the total fee amount calculated from the monthly report. The payment of the total fee amount must be received by DADS no later than 30 calendar days following the end of each month unless the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day for the receipt of the monthly report. The quality assurance fee must be paid by this deadline even if an appeal of the fee has been filed with DADS, the provider's contract has terminated, or the contract has been assigned. HHSC or DADS will not grant any exceptions from the payment of the quality assurance fee, monthly reporting requirements related to the fee, or the collection of other data necessary for the determination of the fee amount to be paid.

(f) Audit of monthly reports. HHSC conducts desk reviews and field audits of monthly reports in order to ensure that all information reported in the reports conforms to all applicable rules and instructions. HHSC may require supporting documentation other than that contained in the monthly report to substantiate reported information. The provider must allow access to the records of provider or any parent company, affiliate, or related party for the purposes of verifying the information contained in the monthly report. For providers contracted with the State of Texas to provide Home and Community-based Services or Community Living Assistance and Support Services, failure to submit monthly reports by the due date, to allow auditors access to the records necessary to verify the amounts reported on the monthly reports, or to complete the monthly reports according to instructions and rules constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations). The provider will be notified of any revisions made to their monthly reports and of any amounts owed or to be returned to the provider based on the revisions. Amounts owed must be paid within 30 days of notification of the amount that is owed.

(g) Penalties. A penalty assessed under this subsection is in an amount equal to one-half the amount of the estimated outstanding quality assurance fee amount, not to exceed $20,000. DADS will assess a financial penalty to be paid by the provider if any of the following occurs:

(1) The provider fails to pay the total fee amount owed for the month.

(2) The provider files a false, erroneous or fraudulent monthly report that either HHSC or DADS concludes resulted in the assessment of a quality assurance fee that is less than the provider should have been assessed.

(3) The provider fails to pay the amounts due from subsection (f) of this section within 30 days of notification.

(4) Penalties are in addition to owed quality assurance fees and are non-refundable.

(h) Continued responsibility. The assessment of a penalty under this section does not relieve a provider from:

(1) Providing services to clients in accordance with its obligations under contract or the law;

(2) Paying additional quality assurance fees that may be assessed to the provider; or

(3) Otherwise complying with licensure and certification requirements.

(i) Vendor Hold. A provider that fails to pay the quality assurance fee by the due date will be placed on vendor hold until all overdue fee amounts are paid to DADS.

(j) Informal review and formal appeal. A provider that disagrees with an adjustment to their monthly report made in accordance with subsection (f) of this section may request an informal review in accordance with §355.110(c) of this title (relating to Informal Reviews and Formal Appeals) and an administrative appeal in accordance with §355.110(d) and (e) of this title (relating to Informal Reviews and Formal Appeals).

(k) Sections §352.1 through §352.9 do not apply to this section.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503293
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective Date: September 1, 2005
Expiration Date: December 29, 2005
For further information, please call: (512) 424-6576

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. QUALITY ASSURANCE FEE

1 TAC §352.10

The Texas Health and Human Services Commission (HHSC) proposes new §352.10, concerning the Quality Assurance Fee for the Home and Community-Based Services and Community Living Assistance and Support Services Waiver Programs, in its Quality Assurance Fee chapter. Elsewhere in this issue of the *Texas Register* HHSC contemporaneously proposes §352.10 for emergency adoption. Under the emergency adoption, §352.10 will become effective September 1, 2005.

Background and Justification

HHSC proposes a new rule for the quality assurance fee program under Chapter 252, Subchapter H, Quality Assurance Fee, of the Health and Safety Code, by providing for a quality assurance fee for services provided under a home and community-based services waiver or a community living assistance and support services waiver.

Section-by-Section Summary

HHSC proposes to add a new §352.10, Quality Assurance Fee for the Home and Community-based Services and Community Living Assistance and Support Services.

Proposed §352.10(a), Definitions, establishes terms and definitions for this rule.

Proposed §352.10(b), Determination of the Fee, establishes that the Health and Human Services Commission (HHSC) shall establish the quality assurance fee amount.

Proposed §352.10(c), Total monthly fee, establishes for each provider the total monthly fee amount, including the formula used to obtain the monthly fee.

Proposed §352.10(d), Monthly reporting, establishes that all contracted providers must file a report with the Department of Aging and Disability Services (DADS) in a format prescribed by DADS that includes the accrued units of service delivered to Medicaid clients for the reporting period and the net operating revenues received for private clients during the reporting period.

Proposed §352.10(e), Payment of the fee, sets forth that the provider must include with the monthly report submitted from subsection (c) of this section, payment of the total fee amount calculated from the monthly report. In addition, DADS must receive the payment of the total fee amount no later than 30 calendar days following the end of each month.

Proposed §352.10(f), Audit of monthly reports, sets forth that HHSC will conduct desk reviews and field audits of monthly reports in order to ensure that all information reported in the reports conforms to all applicable rules and instructions. HHSC may require supporting documentation other than that contained in the monthly report to substantiate reported information. The provider must allow access to the records of the provider or any parent company

Proposed §352.10(g), Penalties, establishes that a penalty assessed under this subsection is in an amount equal to one-half the amount of the estimated outstanding quality assurance fee amount, not to exceed $20,000.

Proposed §352.10(h), Continued responsibility, establishes that assessment of a penalty under this section does not relieve a provider from providing services to clients and complying with licensure and certification requirements.

Proposed §352.10(i), Vendor Hold, establishes that a provider that fails to pay the quality assurance fee by the due date will be placed on vendor hold until all overdue fee amounts are paid to DADS.

Proposed §352.10(j), Informal Review and Formal Appeal, establishes that a provider that disagrees with an adjustment made to their monthly report may request an informal review in accordance with §355.110(d) and (e) of this part (related to Informal Reviews and Formal Appeals).

This proposed rule changes the title of Chapter 352 from "Quality Assurance Fee for Long-Term Care Facilities" to "Quality Assurance Fee" to reflect the inclusion of the identified waiver services in the quality assurance fee program.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the proposed rule is in effect, there will be a fiscal impact to state government. There is a cost to implementing this legislation associated with reimbursing providers through the Medicaid rate. In addition, there are ongoing administrative cost of developing an automated system to bill and track Quality Assurance Fee (QAF) collections. These costs will be offset by a gain in general revenue (dedicated funds) generated from the fee paid by providers. State fiscal year 2006 cost: $24,634,195 general revenue and $62,432,795 total funds. State fiscal years 2007-2010 annual cost: $26,165,790 general revenue and $67,878,435 total funds. Revenue gain to general revenue-dedicated: $26,090,098 for state fiscal years 2006-2010. The proposed rule will result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment, as they will not be required to alter their business practices as a result of the rule. There are will be no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Ed White, Director for Rate Setting and Forecasting, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the rule is that the quality assurance fee that is collected for services under a home and community-based services waiver or a community living assistance and support services waiver will be used as matching funds to draw down Medicaid federal funding for rate increases for these programs. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule, the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

Public Comment

Written comments on the proposed amendments to the rules may be submitted to Gilbert Estrada, Policy Analyst, at the Texas Health and Human Services Commission, Medicaid/CHIP Division, Policy Development Support, P.O. Box 85200-5200, MC - H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 30, 2005, at 10:00 a.m. The hearing will be held in the Public Hearing Room (Lone Star), Braker Building, Health and Human Services Commission, 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at 512-491-1104.

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§352.10. Quality Assurance Fee for the Home and Community-based Services and Community Living Assistance and Support Services.

(a) Definitions. The following definitions apply to this section.

(1) Provider. A person or entity that contracts with the Department of Aging and Disability Services (DADS) as a Home and Community-based Services Program Provider, Community Living Assistance and Support Services-Direct Services Agency Provider, or Community Living Assistance and Support Services-Case Management Agency.

(2) Gross receipts. Money received as compensation for services under an intermediate care facilities for the mentally retarded waiver program such as a home and community services waiver or a community living assistance and support services waiver. The term does not include a charitable contribution, revenues received for services or goods other than waivers, or any money received from consumers or their families as reimbursement for services or goods not normally covered by the waivers.

(3) Net operating revenues. Gross receipts less any deducted amounts for bad debts, charity care, and payer discounts.

(4) Units of service. The units of service by rate type and by level of need, where applicable, that were accrued for the reporting period. Units of service that were delivered and not yet billed or paid to the provider are to be included as units of service.

(b) Determination of the fee. The Health and Human Services Commission (HHSC) shall establish the quality assurance fee as a percentage of net operating revenues such that the total of all fees collected does not exceed six percent of the total annual net operating revenues received by providers in the state under the programs identified in subsection (a)(1) of this section. The quality assurance fee amount may be adjusted as necessary for all providers to ensure that the fees collected do not exceed six percent of the total annual net operating revenues received by providers in the state under the programs identified in subsection (a)(1) of this section.

(c) Total monthly fee amount. For each provider, the total monthly fee amount is equal to the percentage determined in subsection (b) of this section times the number of units of service delivered under the programs identified in subsection (a)(1) of this section during the reporting period times the payment rate in effect on the day the unit of service was delivered plus the percentage determined in subsection (b) of this section times the net operating revenues received for private clients during the reporting period.

(d) Monthly reporting. All contracted providers must file a report with DADS in a format prescribed by DADS and in accordance with instructions provided by DADS that includes the accrued units of service delivered to clients under the programs identified in subsection

(a)(1) of this section for the reporting period and the net operating revenues received for private clients during the reporting period. A separate report must be completed for each contract held by the provider. The report must be received by DADS no later than 30 calendar days following the end of each month unless the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day for the receipt of the monthly report. Additional reports may be required as needed at the discretion of HHSC.

(e) Payment of the fee. The provider must include with the monthly report submitted from subsection (d) of this section, payment of the total fee amount calculated from the monthly report. The payment of the total fee amount must be received by DADS no later than 30 calendar days following the end of each month unless the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day for the receipt of the monthly report. The quality assurance fee must be paid by this deadline even if an appeal of the fee has been filed with DADS, the provider's contract has terminated, or the contract has been assigned. HHSC or DADS will not grant any exceptions from the payment of the quality assurance fee, monthly reporting requirements related to the fee, or the collection of other data necessary for the determination of the fee amount to be paid.

(f) Audit of monthly reports. HHSC conducts desk reviews and field audits of monthly reports in order to ensure that all information reported in the reports conforms to all applicable rules and instructions. HHSC may require supporting documentation other than that contained in the monthly report to substantiate reported information. The provider must allow access to the records of provider or any parent company, affiliate, or related party for the purposes of verifying the information contained in the monthly report. For providers contracted with the State of Texas to provide Home and Community-based Services or Community Living Assistance and Support Services, failure to submit monthly reports by the due date, to allow auditors access to the records necessary to verify the amounts reported on the monthly reports, or to complete the monthly reports according to instructions and rules constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations). The provider will be notified of any revisions made to their monthly reports and of any amounts owed or to be returned to the provider based on the revisions. Amounts owed must be paid within 30 days of notification of the amount that is owed.

(g) Penalties. A penalty assessed under this subsection is in an amount equal to one-half the amount of the estimated outstanding quality assurance fee amount, not to exceed $20,000. DADS will assess a financial penalty to be paid by the provider if any of the following occurs:

(1) The provider fails to pay the total fee amount owed for the month.

(2) The provider files a false, erroneous or fraudulent monthly report that either HHSC or DADS concludes resulted in the assessment of a quality assurance fee that is less than the provider should have been assessed.

(3) The provider fails to pay the amounts due from subsection (f) of this section within 30 days of notification.

(4) Penalties are in addition to owed quality assurance fees and are non-refundable.

(h) Continued responsibility. The assessment of a penalty under this section does not relieve a provider from:

(1) Providing services to clients in accordance with its obligations under contract or the law;

(2) Paying additional quality assurance fees that may be assessed to the provider; or

(3) Otherwise complying with licensure and certification requirements.

(i) Vendor Hold. A provider that fails to pay the quality assurance fee by the due date will be placed on vendor hold until all overdue fee amounts are paid to DADS.

(j) Informal review and formal appeal. A provider that disagrees with an adjustment to their monthly report made in accordance with subsection (f) of this section may request an informal review in accordance with §355.110(c) of this title (relating to Informal Reviews and Formal Appeals) and an administrative appeal in accordance with §355.110(d) and (e) of this title (relating to Informal Reviews and Formal Appeals).

(k) Sections §352.1 through §352.9 do not apply to this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503292
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7103 Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements) in its Reimbursement Rates chapter.

The purpose of the amendment is to change the rate determination authority from DFPS to HHSC and provide the method for determining payment rates effective September 1, 2005. The rule proposal outlines that the rates effective September 1, 2005 for the two years of the biennium will be determined by adjusting the current rates by equal percentages based on a pro rata distribution of the appropriated funds. The rule proposal also documents the method used to determine the current rates in effect for state fiscal years 2004 and 2005 and makes changes in references to the Department of Protective and Regulatory Services (PRS) to references to DFPS. In addition, state fiscal year timeframes were added to provide an accurate reference to the rate determination actions taken in the past two biennium and the rate determination actions proposed for the next biennium.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will not be fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the rule will specify the method used to determine payment rates for this program. The rule proposal will also specify that HHSC is the authority for determining payment rates for this program.

There will not be an effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed new section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.042 of the Government Code.

Questions about the content of the proposal may be directed to Carolyn Pratt at (512) 491-1359 in the Health and Human Services Commission, Rate Analysis Department. Written comments on the proposal may be submitted to Carolyn Pratt, Health and Human Services Commission, Rate Analysis Department H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication in the *Texas Register*.

The amendment is proposed under Government Code, §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Government Code §531.055, which authorizes the executive commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; and Human Resources Code, §40.004(c) and (d), which authorize the executive commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule.

The amendment implements Government Code, §531.033 and §531.055.

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) The following is the authority and process for determining payment rates:

(1) For payment rates established prior to September 1, 2005, [~~The Board of the Texas~~] the Department of Family and Protective Services (DFPS; formerly the Department of Protective and Regulatory Services) [~~(PRS)~~] reviews payment rates for providers of 24-hour residential child care services every other year in an open meeting, after considering financial and statistical information, DFPS [~~PRS~~] rate recommendations developed according to the provisions of this subchapter, legislative direction, staff recommendations, agency service demands, public testimony, and the availability of appropriated revenue. Before the open meeting in which rates are presented for adoption, DFPS [~~PRS~~] sends rate packets containing the proposed rates and average inflation factor amounts to provider association groups. DFPS [~~PRS~~] also sends rate packets to any other interested party, by written request. Providers who wish to comment on the proposed rates may attend the open meeting and give public testimony. Notice of the open meeting is published on the Secretary of State's web site at http://www.sos.state.tx.us/open. DFPS [~~If the Board adopts the proposed rates, PRS~~] notifies all foster care providers of the adopted rates by letter.

(2) For payment rates established September 1, 2005 and thereafter, the Health and Human Services Commission (HHSC) approves rates that are statewide and uniform. In approving rate amounts HHSC takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter. However, HHSC may adjust staff recommendations when HHSC deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Reimbursement amounts will be determined coincident with the state's biennium. HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will be furnished to anyone who requests it.

(b) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS [~~PRS~~] develops rate recommendations for Board consideration for foster homes serving Levels of Care 1 through 4 children as follows:

(1) For all Level of Care 1 rates, DFPS [~~PRS~~] analyzes the most recent statistical data available on expenditures for a child published by the United States Department of Agriculture (USDA) from middle income, dual parent households for the "Urban South." USDA data includes costs for age groupings from 0 to 17 years of age. An age differential is included with one rate for children ages 0-11 years, and another rate for children 12 years and older. Foster homes providing services to Level of Care 1 children receive the rate that corresponds to the age of the child in care.

(A) DFPS [~~PRS~~] excludes health care costs, as specified in the USDA data, from its calculations since Medicaid covers these costs. USDA specified child-care and education costs are also excluded since these services are available in other DFPS [~~PRS~~] day-care programs.

(B) DFPS [~~PRS~~] includes the following cost categories for both age groups as specified in the USDA data: housing, food, transportation, clothing, and miscellaneous.

(C) The total cost per day is projected using the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) Index from the period covered in the USDA statistics to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(2) For Levels of Care 2 through 4 rates, DFPS [~~PRS~~] analyzes the information submitted in audited foster home cost surveys and related documentation in the following ways:

(A) A statistically valid sample of specialized (therapeutic, habilitative, and primary medical) foster homes complete a cost survey covering one month of service if they meet the following criteria:

(i) the foster home currently has a DFPS [~~PRS~~] foster child(ren) residing in the home; and

(ii) the number of children in the home, including the children of the foster parents, is 12 or fewer.

(B) For rates covering the fiscal year 2002-2003 biennium, child-placing agency homes are the only foster homes that complete a cost survey because the children they serve are currently assigned levels of care verified by an independent contractor. By September 1, 2001, children served in DFPS [~~PRS~~] specialized foster homes will also be assigned levels of care verified by an independent contractor. All future sample populations completing a one-month foster home cost survey will include both child-placing agency and DFPS [~~PRS~~] specialized foster homes. As referenced in subsection (j) of this section, during the 2004-2005 biennium, when the rate methodology is fully implemented, DFPS [~~PRS~~] specialized foster homes and child-placing agency foster homes will be required to receive at a minimum the same foster home rate as derived by this subsection.

(C) Cost categories included in the one-month foster home cost survey include:

(i) shared costs, which are costs incurred by the entire family unit living in the home, such as mortgage or rent expense and utilities;

(ii) direct foster care costs, which are costs incurred for DFPS [~~PRS~~] foster children only, such as clothing and personal care items. These costs are tracked and reported for the month according to the level of care of the child; and

(iii) administrative costs that directly provide for DFPS [~~PRS~~] foster children, such as child-care books, and dues and fees for associations primarily devoted to child care.

(D) A cost per day is calculated for each cost category and these costs are combined for a total cost per day for each level of care served.

(E) A separate sample population is established for each type of specialized foster home (therapeutic, habilitative, and primary medical). Each level of care maintenance rate is established by the sample population's central tendency, which is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(F) The rates calculated for each type of specialized foster home are averaged to derive one foster care maintenance rate for each of the Levels of Care 2 through 4.

(G) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(c) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS [~~PRS~~] develops rate recommendations for Board consideration for child-placing agencies serving Levels of Care 1 through 4 children as follows:

(1) The rate-setting model defined in subsection (g) of this section is applied to child-placing agencies' cost reports to calculate a daily rate.

(2) At a minimum, child-placing agencies are required to pass through the applicable foster home rate derived from subsection (b) of this section to their foster homes. The remaining portion of the rate is provided for costs associated with case management, treatment coordination, administration, and overhead.

(3) For rate-setting purposes, the following facility types are included as child-placing agencies and will receive the child-placing agency rate:

(A) child-placing agency;

(B) independent foster family/group home;

(C) independent therapeutic foster family/group home;

(D) independent habilitative foster family/group home; and

(E) independent primary medical needs foster family/group home.

(d) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS [~~PRS~~] develops rate recommendations for Board consideration for residential care facilities serving Levels of Care 1 through 6 as follows:

(1) For Levels of Care 1 and 2, DFPS [~~PRS~~] applies the same rate paid to child-placing agencies as recommended in subsection (c) of this section.

(2) For Levels of Care 3 through 6, the rate-setting model defined in subsection (g) of this section is applied to residential care facilities' cost reports to calculate a daily rate.

(3) For rate-setting purposes, the following facility types are included as residential care facilities and will receive the residential care facility rate:

(A) residential treatment center;

(B) therapeutic camp;

(C) institution for mentally retarded;

(D) basic care facility;

(E) halfway house; and

(F) maternity home.

(e) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS [~~PRS~~] develops rate recommendations for Board consideration for emergency shelters as follows:

(1) DFPS [~~PRS~~] analyzes emergency shelter cost report information included within the rate-setting population defined in subsection (f) of this section. Emergency shelter costs are not allocated across levels of care since, for rate-setting purposes, all children in emergency shelters are considered to be at the same level of care.

(2) For each cost report in the rate-setting population, the total costs are divided by the total number of days of care to calculate a daily rate.

(3) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(4) The emergency shelter rate is established by the population's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(f) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, level [~~Level~~] of care rates for contracted providers including

child-placing agencies, residential care facilities, and emergency shelters are dependent upon provider cost report information. The following criteria applies to this cost report information:

(1) DFPS [~~PRS~~] excludes the expenses specified in §700.1805 and §700.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates). Exclusions and adjustments are made during audit desk reviews and on-site audits.

(2) DFPS [~~PRS~~] includes therapy costs in its recommended payment rates for emergency shelters and for Levels of Care 3 through 6, and these costs will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions applies. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee-for-service Medicaid;

(B) the necessary therapy is not a service allowable under Medicaid;

(C) service limits have been exhausted and the provider has been denied an extension;

(D) there are no Medicaid providers available within 45 miles that meet the needs identified in the service plan to provide the therapy; or

(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transition period not to exceed 90 days or 14 sessions, whichever is less. Any exception beyond the 90 days or 14 sessions must be approved by DFPS [~~PRS~~] before provision of services.

(3) DFPS [~~PRS~~] may exclude from the database any cost report that is not completed according to the published methodology and the specific instructions for completion of the cost report. Reasons for exclusion of a cost report from the database include, but are not limited to:

(A) receiving the cost report too late to be included in the database;

(B) low occupancy;

(C) auditor recommended exclusions;

(D) days of service errors;

(E) providers that do not participate in the level of care system;

(F) providers with no public placements;

(G) not reporting costs for a full year;

(H) using cost estimates instead of actual costs;

(I) not using the accrual method of accounting for reporting information on the cost report;

(J) not reconciling between the cost report and the provider's general ledger; and

(K) not maintaining records that support the data reported on the cost report.

(4) DFPS [~~PRS~~] requires all contracted providers to complete the first portion of the cost report including contracted provider identification; preparer/contact person; facility license type; reporting period; days of service by level of care provided during the reporting period; facility capacity and occupancy status; and cost report exemption determination. Providers that meet any one of the following criteria are not required to complete the entire cost report:

(A) total number of days of service for state-placed children equal to or less than 10% of total days of service;

(B) total number of DFPS [~~PRS~~] days of service equal to or less than 10% of total days of service;

(C) no services provided to DFPS [~~PRS~~] children;

(D) services provided to only Level of Care 1 children;

(E) contract with DFPS [~~PRS~~] terminated or was not renewed;

(F) occupancy rate for emergency shelters is less than 30%; or

(G) occupancy rate for all other facility types, except for child-placing agencies, is less than 50%.

(5) The occupancy rate equals the total number of days of service provided during the reporting period divided by the maximum operating capacity. The maximum operating capacity is the number of residents the facility is equipped to serve multiplied by the number of days in the reporting period.

(6) All contracted providers not meeting the exemption criteria defined in paragraph (4) of this subsection are included in the rate-setting population and must complete the entire cost report for rate-setting purposes, including:

(A) all child-placing agencies because they do not report occupancy;

(B) emergency shelters with a 30% or more overall occupancy rate; and

(C) all other facilities with a 50% or more overall occupancy rate.

(g) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, a [~~A~~] rate-setting model is applied to child-placing agencies' and residential care facilities' cost report information included within the rate-setting population defined in subsection (f) of this section. Three allocation methodologies are used in the rate-setting model to allocate allowable costs among the levels of care of children that are served. The methodologies are explained below and are applied as follows:

(1) The first methodology is a staffing model, validated by a statistically valid foster care time study, driven by the number of direct care and treatment coordination staff assigned to a child-placing agency or residential care facility to care for the children at different levels of care. The staffing model produces a staffing complement that is applied to direct care costs to allocate the costs among the levels of care.

(A) Staff positions reported on the direct care labor area of the cost report are grouped into the following categories to more clearly define the staffing complement required at each level of care:

(i) case management;

(ii) treatment coordination;

(iii) direct care;

(iv) direct care administration; and

(v) medical.

(B) A categorized staffing complement for each Level of Care 1 through 6 is derived as follows:

(i) A 14-day foster care time study is applied to a representative sample of residential care facilities and child-placing agencies that completed a cost report.

(ii) Contracted staff, or employees, within the sampled facilities complete a foster care time study daily activity log that assigns half-hour units of each employee's time to the individual child(ren) with whom the employee is engaged during the time period. By correlating the distribution of the employee's time with the level of care assigned to each child, the employee's time is distributed across the Levels of Care 1 through 6.

(iii) The foster care time study daily activity log also captures the type of activity performed. The total amount of time spent in each of these activities is a component in determining the number of staff needed in each of the categories included in the staffing complement. The activities performed include:

(I) care and supervision;

(II) treatment planning and coordination;

(III) medical treatment and dental care; and

(IV) other (administrative, managerial, training functions, or personal time).

(iv) An analysis of the cumulative frequency distribution of these time units by level of care of all children served in the sample population, by category of staff performing the activity, and by type of activity, establishes appropriate staffing complements for each level of care in child-placing agencies and in residential care facilities. These time units by level of care are reported as values that represent the equivalent of a full-time employee. The results are reported in the following chart for incorporation into the rate-setting model:
Figure: 1 TAC §355.7103(g)(1)(B)(iv) (No change.)

(v) The foster care time study should be conducted every other biennium, or as needed, if service levels substantially change.

(C) Staff position salaries and contracted fees are reported as direct care labor costs on the cost reports. Each staff position is categorized according to the staffing complement outlined for the time study. The salaries and contracted fees for these positions are grouped into the staffing complement categories and are averaged for child-placing agencies and residential care facilities included in the rate-setting population. This results in an average salary for each staffing complement category (case management, treatment coordination, direct care, direct care administration, and medical).

(D) The staffing complement values, as outlined in the chart at paragraph (1)(B)(iv) of this subsection, are multiplied by the appropriate average salary for each staffing complement category. The products for all of the staffing complement categories are summed for a total for each level of care for both child-placing agencies and residential care facilities. The total by level of care is multiplied by the number of days of service in each level of care, and this product is used as the primary allocation statistic for assigning each provider's direct care costs to the various levels of care.

(E) Direct care costs include the following areas from the cost reports:

(i) direct care labor;

(ii) total payroll taxes/workers compensation; and

(iii) direct care non-labor for supervision/recreation, direct services, and other direct care (not CPAs).

(2) The second methodology allocates the following costs by dividing the total costs by the total number of days of care for an even distribution by day regardless of level of care. This amount is multiplied by the number of days served in each level:

(A) direct care non-labor for dietary/kitchen;

(B) building and equipment;

(C) transportation;

(D) tax expense; and

(E) net educational and vocational service costs.

(3) The third methodology allocates the following administrative costs among the levels of care by totaling the results of the previous two allocation methods, determining a percent of total among the levels of care, and applying those percentages:

(A) administrative wages/benefits;

(B) administration (non-salary);

(C) central office overhead; and

(D) foster family development.

(4) The allocation methods described in paragraphs (1)-(3) of this subsection are applied to each child-placing agency and residential care facility in the rate-setting population, and separate rates are calculated for each level of care served. Rate information is included in the population to set the level of care rate if the following criteria are met:

(A) Providers must have at least 30% of their service days within Levels of Care 3 through 6 for residential settings. For example, for the provider's cost report data to be included for calculating the Level of Care 3 rate, a provider must provide Level of Care 3 services for at least 30% of their service days.

(B) For Levels of Care 5 and 6, a contracted provider could provide up to 60% of "private days" services to be included in the rate-setting population. They must provide at least 40% state-placed services.

(5) Considering the criteria in paragraph (4) of this subsection, the rate-setting population is fully defined for each level of care. Based on this universe, each level of care rate will be established by the group's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(6) The total cost per day for each child-placing agency and residential care facility is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(h) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS [~~PRS~~] uses the Implicit Price Deflator - Personal Consumption Expenditures (IPD-PCE) Index, which is a general cost inflation index, to calculate projected allowable expenses. The IPD-PCE Index is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. DFPS [~~PRS~~] uses the lowest feasible IPD-PCE Index forecast consistent with the forecasts of nationally recognized sources available to DFPS [~~PRS~~] when the rates are prepared. Upon written request, DFPS [~~PRS~~] will provide inflation factor amounts used to determine rates.

(i) All reimbursement rates will be equitably adjusted to the level of appropriations authorized by the Legislature.

(j) There will be a transition period for the fiscal year 2002-2003 biennium. During this period current rates will not be reduced, and any increased funding will be applied to those levels of care that are less adequately reimbursed according to the methodology. Since increased funding was appropriated at a different percentage for each year of the 2002-2003 biennium, the rates will be set separately for each year instead of setting a biennial rate, and inflation factors will be applied to the middle of each year of the biennium. [~~Full implementation of the methodology will occur during the fiscal year 2004-2005 biennium.~~]

(k) For the SFY 2004 through 2005, DFPS determines payment rates using the rates determined for SFY 2002 and 2003 from subsections (a) through (h) of this section, with adjustments for the transition from a six level of care system to a four service level system of payment rates.

(l) For the state fiscal year 2006 through 2007 biennium, the 2005 payment rates in effect on August 31, 2005 will be adjusted by equal percentages based on a prorata distribution of additional appropriated funds.

(m) [~~(k)~~] HHSC [~~The Board~~] may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(n) [~~(l)~~] To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses [~~PRS's~~] outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by the executive director. Rates are subject to adjustment as allowed in subsections (a) and (m) [~~(k)~~] of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503274
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 424-6900

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 176. DRIVER TRAINING SCHOOLS SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

19 TAC §§176.1101, 176.1104, 176.1105, 176.1117, 176.1118

The Texas Education Agency (TEA) proposes amendments to §§176.1101, 176.1104, 176.1105, 176.1117, and 176.1118, concerning driver training schools. The sections establish provisions relating to minimum standards for operation of licensed Texas driving safety schools and course providers. The proposed amendments would implement the issuance of certificate numbers rather than paper certificates, in accordance with House Bill 468, 79th Texas Legislature, Regular Session, 2005. The proposed amendments would also include a correction of inconsistent use of terms.

Effective September 1, 2005, House Bill 468, 79th Texas Legislature, 2005, amends language found in the Texas Education Code (TEC), Chapter 1001. Specifically, House Bill 468 amends TEC, §§1001.056, 1001.151(e), 1001.209(b), 1001.351(a) and (b), 1001.456(b), and 1001.555(a) and (c), to change the manner in which uniform certificates of course completion are provided. The agency currently provides each licensed course provider with printed uniform certificates of course completion. In accordance with House Bill 468, the agency must now provide course completion certificate numbers instead. The proposed amendments to rules in 19 TAC Chapter 176, Subchapter BB, implement these legislative changes. In addition, the proposed amendments include a correction to terminology. Following is a summary of the proposed amendments.

The proposed amendment to 19 TAC §176. 1101, Definitions, would modify paragraph (10) to insert language to include purchase of numbers for the production of uniform certificates of completion for the existing definition of an inactive course; add new paragraph (12) to define mail or commercial delivery and forbid the use of e-mail and facsimile as delivery methods; and renumber subsequent subsections accordingly. Renumbered paragraph (18), previous paragraph (17), would be revised to enable course providers to issue uniform certificates of completion using serial numbers purchased from the driver training division. The revision to paragraph (18) would also add Article 45.051 of the Code of Criminal Procedures as a requirement for certificates and define a certificate as all parts of an original or duplicate certificate.

The proposed amendment to 19 TAC §176.1104, Course Provider Licensure, would modify subsections (k) and (l) to add language to include certificate numbers as well as paper certificates.

The proposed amendment to 19 TAC §176.1105, Driving Safety School and Course Provider Responsibilities, would modify subsection (b) by adding new paragraphs (9) and (10) with language to enable course providers to print and issue both original and duplicate agency-approved uniform certificates of course completion and report the issuance to TEA within seven days. Subsection (c) would be modified by adding new paragraph (10) to require school owners to pay, within seven days, a fee equal to the fee paid by the course provider for original uniform certificate of course completion numbers for those certificates issued to their students.

The proposed amendment to 19 TAC §176.1117, Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course, would modify subsection (a) to include both original and duplicate certificates. Specifically, subsection

(a) would be modified as follows. Paragraph (2) would require course providers to safeguard the production of original and duplicate certificates; paragraph (3) would enable the new system of numbers rather than paper documents; and existing paragraph (4) would be deleted and subsequent paragraphs renumbered. Renumbered paragraph (4) would require that course providers take measures to replace lost certificate number data; renumbered paragraph (5) would add language that defines successful completion of a course; renumbered paragraph (6) would add language that requires course providers to maintain all parts of duplicate certificates and specify maintenance for a period of three years; renumbered paragraph (8) would add language to enable numbers in place of paper certificates; renumbered paragraph (9) would add language to cover both numbers and paper certificates; renumbered paragraph (10) would add language that requires course providers to mail both original and duplicate certificates using first-class mail or better; and renumbered paragraph (11) would clarify mailing of original and duplicate certificates.

The proposed amendment to 19 TAC §176.1117 would also modify subsection (a) by adding new requirements relating to original and duplicate uniform certificates of course completion. New paragraph (13) would forbid duplicating the number used on either an original or duplicate certificate; new paragraph (14) would require course providers to sequentially number original and duplicate certificates using numbers purchased from the division; new paragraph (15) would require course providers to show both the original certificate number and the replacement certificate number on duplicate certificates; new paragraph (16) would require course providers to show both the original entry and the new entry on any item in the duplicate that is different from the original; new paragraph (17) would set the fee for a duplicate at $10 and allow a course provider to waive the fee if the duplicate is provided due to no fault of the student; and new paragraph (18) would require course providers to use TEA guidelines for the issuance of original and duplicate certificates.

The proposed amendment to 19 TAC §176.1118, Application Fees and Other Charges, would modify subsection (a) to add course provider license to those fees required for a change of ownership. This modification would correct an inconsistent use of terms. Subsection (c) would be modified to delete paragraph (17) because duplicate certificate fees would now be collected by course providers and renumbered paragraph (17), previous paragraph (18), would be changed to reflect that the fee is for certificate numbers in lieu of paper certificates.

Ernest Zamora, associate commissioner for support services and school finance, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. There will be no fiscal impact on the TEA budget, private industry, or individual students. The revisions to 19 TAC Chapter 176, Subchapter BB, will require the driver training division to adjust internal assignments in order to modify the existing database used to track uniform certificates of course completion for driving safety courses. In addition, the division will expend some additional man hours on the importation of data submitted by course providers on the issue of certificates. The TEA has determined that staff on hand can adjust to those requirements without additional FTEs. Therefore, there should be no added cost to the TEA.

Dr. Zamora has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the sections will be a net reduction in regulatory requirements for industry members but greater responsibility for printing and tracking original and duplicate uniform certificates of course completion. There will not be an effect on small businesses. Even though there are changes in the printing and distribution of both original and duplicate certificates of course completion, the cost is offset by savings to the state and by increased revenue to private industry. Relative costs for small and large business will be the same. The cost or savings involved are the same per unit, regardless of business size, but the net results will vary depending on business size and volume. There is no anticipated economic cost to persons who are required to comply with the amendments. The process will be transparent to the student. Individual students will pay the same fees as previously.

Until passage of House Bill 468, course providers (private industry) were required to purchase uniform certificates of course completion from the driver training division. This law allows course providers to purchase serial numbers to apply to TEA-approved certificates printed by the industry. The cost of paper certificates (under the old system) and serial numbers under House Bill 468 is the same. Additionally, the bill allows course providers to issue duplicate certificates at a price set by the TEA. The fee for a duplicate is set in rule at $10. There will be a cost for printing the original and duplicate certificates. There will be a savings to private industry because they will no longer have to pay for shipment of paper certificates but rather will buy serial numbers electronically. There will be a profit in the sale of duplicate certificates, previously handled by the driver training division. The TEA believes that the increased revenue and decreased cost will result in a revenue-neutral position for the industry. The only difference in cost or savings is predicated on volume of business and numbers of employees. The cost per unit is the same for the smallest and largest businesses.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses and Texas Education Code, §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendments implement the TEC, §§1001.051 - 1001.153, 1005.056, and 1001.213.

§176.1101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school and/or course. This includes Meta tags and search engine listings.

(2) Break--An interruption in a course of instruction occurring after the course introduction and before the comprehensive exam and course summation.

(3) Change of ownership of a school or course provider--A change in the control of the school or course provider. Any agreement to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school or course provider is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

(4) Clock hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(5) Course validation question--A question designed to establish the student's participation in the course and comprehension of the course material by requiring the student to answer a question regarding a fact or concept taught in the course.

(6) Division--The division of the Texas Education Agency (TEA) responsible for administering the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(7) Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the driving safety schools and course providers and designated as director of the division responsible for licensing driver training programs.

(8) Final examination question--A question designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(9) Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions, unless the applicant can successfully demonstrate that the applicant has been rehabilitated;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last seven years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person has not owned or operated a school or course provider with serious violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a driver education certificate or uniform certificate of course completion to any person or school not authorized to possess it. In making this determination, the division may consider the seriousness and number of violations, efforts made to correct the violations, and the history of similar violations;

(E) the person has not failed to provide material information to representatives of TEA or falsified instructional records or any documents required for approval or continued approval;

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years; and

(G) in the event that an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon review of evidence that the conduct underlying the basis of the deferred adjudication has not rendered the person unworthy to provide driver training instruction. When determining underlying conduct, the commissioner may consider the facts and circumstances surrounding the deferred adjudication.

(10) Inactive course--A driving safety or specialized driving safety course for which no uniform certificates of completion or course completion certificate numbers have been purchased for 36 months or longer.

(11) Instructor trainer--A driving safety instructor or specialized driving safety instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

(12) Mail or commercial delivery--First Class U.S. mail or equivalent commercial delivery services that deliver no sooner than the day following successful course completion. Electronic delivery such as e-mail or facsimile is not acceptable as a commercial delivery service.

(13) [~~(12)~~] Moral turpitude--Conduct that is inherently immoral or dishonest.

(14) [~~(13)~~] New course--A driving safety or specialized driving safety course is considered new when it has not been approved by TEA to be offered previously; or has been approved by TEA and offered and then discontinued; or the content, lessons, or delivery of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(15) [~~(14)~~] Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(16) [~~(15)~~] Public or private school--For the purpose of these rules, a public or private school is an accredited public or nonpublic secondary school.

(17) [~~(16)~~] Specialized driving safety course--A six-hour driving safety course that includes at least four hours of training intended to improve the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(18) [~~(17)~~] Uniform certificate of course completion--A document with a serial number purchased from the division that is printed, administered, and supplied by course providers [~~TEA to owners~~] or primary consignees for issuance to students who successfully complete an approved driving safety or specialized driving safety course and that meets the requirements of Transportation Code, Chapter 543, and Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate [~~a~~] uniform certificate of course completion [~~with the same serial number~~]. It is a government record.

§176.1104. Course Provider Licensure.

(a) Application for course provider. An application for a license for a course provider shall be made on forms supplied by the Texas Education Agency (TEA). An application from a course provider

that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Posting of a $25,000 bond shall satisfy the requirements for financial stability for a course provider.

(c) Course provider license. The course provider license shall indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for course provider.

(1) In the case of an original or change of owner application for a course provider, the owner of the course provider shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the course provider shall provide verification that no change in ownership has occurred. The division may require additional evidence to verify that no change of ownership has occurred.

(e) Adequate educational and experience qualifications. The course provider shall provide as part of the application sufficient documentation to support adequate educational and experience qualifications in order to carry out the responsibilities of a course provider. Verifiable education and/or experience in administration and/or supervision shall be required. Adequate educational and experience qualifications have been satisfied if the course provider meets one of the following.

(1) A course provider who has owned or been a primary consignee of an approved driving safety course and has been fully operational as a course provider in the State of Texas for a continuous 12-month period before September 1, 1995, satisfies the educational and experience qualifications.

(2) A course provider who has an approved driving safety course but has not been fully operational as a course provider for a continuous 12-month period must submit evidence of at least one year of experience in administration and/or supervision.

(3) A new course provider shall submit evidence of:

(A) at least 30 semester credit hours of education from an accredited postsecondary institution and two years of paid experience in administration and/or supervision; or

(B) a combined total of three years of driver and traffic safety education or experience and administrative/management experience; however, a minimum of six months in each shall be required.

(f) Effective date of the course provider license. The effective date of the course provider license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(g) Purchase of course provider.

(1) A person or persons purchasing a licensed course provider shall obtain an original license. The application for a new course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the course provider shall be submitted to TEA. The contract or any instrument transferring the ownership of the course provider shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the course provider shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(3) A change of ownership of a course provider is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(4) In the event a change of ownership is substantially similar, the applicant pays a change in ownership fee as opposed to an initial application fee.

(h) New location.

(1) The division shall be notified in writing of any change of address of a course provider at least five working days before the move.

(2) The course provider must submit the appropriate fee and all documents designated by the division as being necessary. A course provider license may be issued after the complete required documents are approved.

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a revised continuing education course for the next year;

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA; and

(5) any other revision or evidence of which the course provider has been notified in writing that is necessary to bring the course provider's application for a renewal license to a current and accurate status.

(j) Notification of legal action. A course provider shall notify the division in writing of any legal action that is filed against the course provider, its officers, any owner, or any school instructor that might concern the operation of the course provider within five working days after the course provider becomes aware of the fact that the legal action has commenced or the legal process has been served. Included with

the written notification, the course provider shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(k) Course provider closure. A course provider owner shall notify TEA at least five business days before the course provider closure. The course provider shall provide written notice of the actual discontinuance of the operation the day of cessation of business. A course provider shall make all records and all used and unused uniform certificates of course completion and course completion certificate numbers available for review by [~~to~~] TEA within 30 days of the date the course provider ceases operation.

(l) Course providers and all course provider facilities that process, deliver, or store curriculum materials, student records, or uniform certificates of course completion and certificate numbers to be used for Texas courses must be located within the United States.

§176.1105. Driving Safety School and Course Provider Responsibilities.

(a) Course providers must be located, or maintain a registered agent, in the State of Texas. All instruction in a driving safety or specialized driving safety course shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. However, a student instructor trainee may teach the 12 hours necessary for licensing in a TEA-approved location under the direction and in the presence of a licensed driving safety or specialized driving safety instructor trainer who has been trained in the curriculum being instructed.

(b) Each course provider or employee shall:

(1) ensure that instruction of the course is provided in schools currently approved to offer the course, and in the manner in which the course was approved;

(2) ensure that the course is provided by persons who have a valid current instructor license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(3) ensure that schools and instructors are provided with the most recent approved course materials and relevant data and information pertaining to the course within 60 days of approval. Instructor training may be required and shall be addressed in the approval notice;

(4) not falsify driver training records;

(5) ensure that applications for licenses or approvals are forwarded to TEA within ten days of receipt at the course provider facilities;

(6) ensure that instructor performance is monitored. A written plan describing how instructor performance will be monitored and evaluated shall be provided to the schools. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation (a minimum of once a year), and the corrective action to be taken when instructors do not meet the criteria established by the course provider. The instructor evaluation forms must be kept on file either at the course provider or school location for a period of one year;

(7) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; [~~and~~]

(8) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students; [~~.~~]

(9) develop and maintain an agency-approved method for printing and issuing original and duplicate uniform certificates of course completion that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates; and

(10) report original and duplicate certificate data, by secure electronic transmission, to TEA within seven days of issue using guidelines established and provided by TEA. The issue date indicated on the certificate shall be the date the course provider mails the certificate to the student.

(c) Each driving safety school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a verification of course completion only for a person who has successfully completed the entire course;

(5) not falsify driver training records;

(6) ensure that instructors give students the opportunity to evaluate the course and instructor on an official evaluation form;

(7) evaluate instructor performance in accordance with the course provider plan;

(8) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; [~~and~~]

(9) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students; and [~~.~~]

(10) pay a fee to the course provider that is equal to the fee paid by the course provider to TEA for course completion certificate numbers for original certificates provided for the students of that school within seven calendar days of the date each student successfully completes the driving safety course.

(d) For the purposes of Texas Education Code, Chapter 1001, and this chapter, each person employed by or associated with any driving safety school shall be deemed an agent of the driving safety school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1117. Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

(a) Course provider responsibilities. Course providers shall be responsible for original and duplicate uniform certificates of course completion in accordance with this subsection.

(1) The course provider of a driving safety or specialized driving safety course shall ensure that each instructor completes the

verification of course completion document approved by the Texas Education Agency (TEA). The verification of course completion document shall contain a statement to be signed by the instructor that states: "Under penalty of law, I attest to the fact that the student whose name and signature appears on this document has successfully completed the number of hours as required under Texas Education Code, Chapter 1001, and that any false information on this document will be used as evidence in a court of law and/or administrative proceeding." This verification of course completion document shall be returned to the course provider upon completion of each driving safety class and maintained for no less than three years.

(2) The course provider shall implement and maintain a policy which effectively ensures protective measures are in use at all times for securing original and duplicate [~~implemented by the course provider to ensure that unissued~~] uniform certificates of course completion and course completion certificate numbers [~~are secure at all times~~]. The records and unissued or unnumbered original and duplicate uniform certificates of course completion shall be readily available for review by representatives of TEA.

(3) The course provider shall maintain electronic files with data pertaining to all [~~uniform certificates of~~] course completion certificate numbers purchased from TEA. The course provider shall make available to TEA upon request an ascending numerical accounting record of [~~the students receiving~~] the numbered uniform certificates of completion issued. The course provider shall ensure security of the data.

~~[(4) The course provider shall electronically transmit data pertaining to issued uniform certificates of completion within seven calendar days of issuance of the certificates. The issue date indicated on the certificate shall be the date the course provider mails the certificate to the student.]~~

(4) [~~(5)~~] The course provider shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all certificate numbers, whether used or not used, and all certificates that have been issued.

(5) [~~(6)~~] Course providers shall issue and mail uniform certificates of course completion only to students who have successfully completed all elements of the course provider's approved driving safety or specialized driving safety course taught by TEA-licensed instructors in TEA-approved locations as indicated on the verification of course completion document or student footprint.

(6) [~~(7)~~] The course provider must keep all parts of all voided original and duplicate uniform certificates of course completion for a period of three years.

(7) [~~(8)~~] Course providers shall ensure that adequate training is provided regarding course provider policies and updates on course provider policies to all driving safety schools and instructors offering their approved driving safety or specialized driving safety course.

(8) [~~(9)~~] Course providers shall report all unaccounted original and duplicate [~~uniform certificates of~~] course completion certificate numbers or unissued certificates or duplicates to the division within five business days of the discovery of the incident. In addition, the course provider shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted items [~~uniform certificates of course completion~~]. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted for approval to the division within 30 days of the discovery [~~on a form provided by TEA~~].

(9) [~~(10)~~] Each unaccounted or missing original or duplicate course completion certificate number or blank or unissued original or duplicate uniform certificate of completion may be considered a separate violation within the meaning of Texas Education Code, §1001.553. This may include lost, stolen, or otherwise unaccounted original or duplicate course completion certificate number or blank or unissued original or duplicate uniform certificates of course completion.

(10) [~~(11)~~] Course providers shall mail all original and duplicate uniform certificates of course completion using first-class or enhanced postage or an equivalent commercial delivery method.

(11) [~~(12)~~] Course providers shall not transfer [~~uniform certificates of~~] course completion certificate numbers to a course other than the course for which the certificates were ordered from TEA.

(12) [~~(13)~~] No course provider or employee shall complete, issue, or validate a uniform certificate of course completion to a person who has not successfully completed all elements of the entire course as verified by a TEA-licensed instructor.

(13) No course provider or employee shall issue, mail, transfer, or transmit an original or duplicate uniform certificate of course completion bearing the serial number of a certificate or duplicate previously issued.

(14) Course providers shall sequentially number original uniform certificates of course completion from the block of numbers purchased from the division for the purpose specified in paragraph (13) of this subsection.

(15) When a duplicate uniform certificate of course completion is issued by a course provider, the duplicate certificate shall bear a serial number from the block of numbers purchased from the division by the course provider. The duplicate certificate of course completion shall clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced.

(16) Any item on a duplicate uniform certificate of course completion that has different data than that shown on the original certificate must clearly indicate both the original data and the replacement data; for example, a change in the date of course completion must show the correct date and "changed from XX," where "XX" is the date shown on the original uniform certificate of course completion.

(17) Course providers shall charge a student a fee of $10 for a duplicate uniform certificate of course completion, but may waive the fee if the duplicate certificate is necessary due to error or circumstances beyond the control of the student. A course provider may recover the cost of overnight or commercial delivery services authorized by the student for a duplicate uniform certificate of course completion.

(18) Course providers shall use the guidelines established and provided by TEA for the issuance of original and duplicate uniform certificates of course completion.

(b) School owner responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety school owners shall ensure that:

(1) the course provider policies are followed and communicated to all instructors and employees of the school; and

(2) all records are returned to the course provider in a timely manner as set forth by the course provider.

(c) Instructor responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety and specialized driving safety instructors shall ensure that:

(1) all records are returned to the driving safety school to be forwarded to the course provider within the time allowed by course provider policy;

(2) the verification of course completion document provided by the course provider is signed by the instructor who conducted the class upon completion of the class;

(3) the entire course is completed prior to signing the verification of course completion document;

(4) the court information is obtained from each student taking the driving safety or specialized driving safety class for the purposes of Code of Criminal Procedure, Article 45.051 and 45.0511. Students who want an insurance reduction only shall have "insurance only" indicated in the court information area on the verification of course completion document provided to the course provider; and

(5) the instructor adheres to the school and course provider policies.

§176.1118. Application Fees and Other Charges.

(a) If a driving safety school or course provider changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school or course provider license. In cases where, according to §176.1104(g)(3) of this title (relating to Course Provider Licensure), the change of ownership of a course provider is substantially similar, the new owner shall pay the statutory fees allowed by Texas Education Code, §1001.151.

(b) A late renewal fee shall be paid in addition to the annual renewal fee if a driving safety school or course provider fails to postmark a complete application for renewal at least 30 days before the expiration date of the driving safety school license. The requirements for a complete application for renewal are found in §176.1103(f) of this title (relating to Driving Safety School Licensure) and §176.1104(i) of this title (relating to Course Provider Licensure). The complete renewal application must be postmarked or hand-delivered with a date on or before the due date.

(c) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The fee for a driving safety or specialized driving safety course approval is $9,000.

(2) The initial fee for a course provider is $2,000.

(3) The initial fee for a driving safety school is $150.

(4) The annual renewal fee for a course provider is $200.

(5) The fee for a change of address of a course provider or driving safety school is $50.

(6) The fee for a change of name of a course provider or name of owner is $100.

(7) The fee for a change of name of a driving safety school or name of owner is $50.

(8) The application fee for each additional course for a driving safety school is $25.

(9) The application fee for each administrative staff member is $15.

(10) A processing fee of $50 shall accompany each application for an original driving safety or specialized driving safety instructor's license.

(11) The annual instructor license fee is $25.

(12) The late instructor renewal fee is $25.

(13) The duplicate driving safety or specialized driving safety instructor license fee is $8.00.

(14) The fee for an investigation at a driving safety school or course provider to resolve a complaint is $1,000.

(15) The course provider late renewal fee is $200.

(16) The driving safety school late renewal fee is $100.

~~[(17) The fee for a duplicate uniform certificate of course completion is $10.]~~

(17) [~~(18)~~] The fee for a [~~uniform certificate of~~] course completion certificate number is $1.70.

(d) Failure to pay a required fee or penalty assessed shall be cause for revocation or denial of any license held by a course provider, driving safety school, or instructor of whom the fee or penalty is required. Revocation or denial proceedings shall be started if the fee is not paid within 30 days of the expiration date of the appeal period set forth in Texas Education Code, §1001.460.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.31

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Examiners of Psychologists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §461.31, Psychological Associate Advisory Committee (the PAAC). This rule is being repealed to adhere to the abolishment of the PAAC set forth by the 79th Texas Legislature.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be adherence to state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The repeal is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.31. Psychological Associate Advisory Committee (the PAAC).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.10

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.10, Provisionally Licensed Psychologist. This amendment is being proposed to allow an applicant to obtain provisional licensure in a streamlined fashion.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to assist some applicants in obtaining licensures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.10. Provisionally Licensed Psychologist.

(a) - (b) (No change.)

(c) An applicant for provisional licensure as a psychologist who is accredited by CPQ or the National Register or who is a specialist of ABPP will have met the following requirements for provisional licensure: submission of an official transcript which indicates the date the doctoral degree in psychology was awarded or conferred, submission of documentation of the passage of the national psychology examination at the doctoral level at the Texas cut-off score, and submission of three acceptable reference letters. All other requirements for provisional licensure must be met by these applicants. Additionally, these applicants must provide documentation sent directly from the qualifying entity to the Board office declaring that the applicant is a current member in the organization and has had no disciplinary action from any state or provincial health licensing board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.11, Licensed Psychologist. This amendment is being proposed to clarify for applicants for licensure the requirements for supervised experience.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.11. Licensed Psychologist.

(a) - (b) (No change.)

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met

either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years, for full-time experience.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) - (O) (No change.)

(P) Teaching is not allowed for supervised experience, effective for any supervised experience effective June 1, 2006.

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
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22 TAC §463.13

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.13, Requirements for Experienced Out-of-State Applicants. This amendment is being proposed in adherence to the changes made by the 79th Texas Legislature to the section of the Psychologists' Licensing Act regarding licensure as a psychologist.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to assist some applicants in obtaining licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.13. Requirements for Experienced Out-of-State Applicants.

[~~(a)~~] An applicant who provides documentation that the applicant is [~~has been~~] actively licensed and in good standing as a psychologist in another jurisdiction [~~for at least 5 consecutive years immediately preceding the filing of the application,~~] must meet the following requirements, which are a substitute for Board rule §463.11:

(1) - (3) (No change.)

[~~(b) Licensees holding the Certification of Professional Qualification in Psychology (CPQ) Credential granted by the Association of State and Provincial Psychology Boards (ASPPB). An out-of-state licensee holding a CPQ credential granted by the ASPPB meets the requirements of Board rule §463.11. In addition, out-of-state licensees who hold a CPQ credential must meet requirements (a)(1) and (a)(3) listed above. The Board reserves the right to accept or reject licensure for persons holding the CPQ credential.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

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Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §463.15

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.15, Oral Examination. This amendment is being proposed in adherence to the changes made by the 79th Texas Legislature to the section of the Psychologists' Licensing Act regarding the oral examination.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the requirements and standards of the oral examination. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.15. Oral Examination.

(a) (No change.)

(b) Eligibility. To be eligible for licensure as a psychologist, all provisionally licensed psychologists shall be required to take and pass the oral exam administered by the Board. Only provisionally licensed psychologists may apply to take the oral exam. The Board shall waive this requirement for Specialists [~~Diplomates~~] of the American Board of Professional Psychology, individuals who qualify for licensure by experience pursuant to Board rule §463.13, and for individuals who qualify for licensure under reciprocity.

(c) A candidate for the oral examination must demonstrate sufficient entry-level knowledge of the practice of psychology to pass the exam based on the following standards:

(1) A candidate must have a total score of 64 or above from each of the two examiners to pass the exam.

(2) Scores are based on the demonstrated abilities of the candidate in nine content areas with a possible score in each content score of 9 points for a well articulated verbal answer, 8 points for a good or passing answer, 3 points for a weak, vague or incomplete answer, and minus 10 points for an answer that is substantially incomplete or incorrect.

(3) The nine content area are as follows:

(A) Identifies the problems (e.g. initial hypotheses, differential diagnoses, etc.);

(B) Identifies a specific and plausible strategy for gathering further data to refine the problem definition (e.g. psychometrics, observation data collection, etc.);

(C) Develops a realistic intervention or action plan on the basis of the initial formulation;

(D) Recognizes and can formulate an effective response to crises;

(E) Attends to cultural and diversity issues;

(F) Demonstrates awareness of professional limitations;

(G) Can recognize and apply laws which are relevant to the case;

(H) Can recognize and apply professional standards that are relevant; and

(I) Can recognize and apply ethical standards or ethical reasoning pertinent to the case.

(4) Each candidate is presented with a vignette, which is representative of a situation commonly encountered in the area of testing. Candidates are required to articulate a case formulation according to a standard or model that is generally recognized in their area of testing. Candidates are required to respond to questions associated with each vignette.

(5) Areas of psychology in which a candidate may choose to be tested are: clinical, counseling, school, neuropsychological, and industrial and organizational.

(6) Advance additional information is provided to each candidate in the form of a brochure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 305-7700

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22 TAC §463.24

The Texas State Board of Examiners of Psychologists proposes new §463.24, Oral Examination Work Group. This new rule is being proposed to comply with changes to the Psychologists' Licensing Act made by the 79th Texas Legislature.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to improve the consistency of administration and the objectivity of the oral examination. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The new section is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.24. Oral Examination Work Group.

(a) The Board establishes a work group of oral examination consultants for the purpose of improving the consistency of the administration and the objectivity of the examination. Qualifications of the consultants are set by Board rule §463.23. Members of the work group must be approved by the board or its designee.

(b) The work group will include persons interested in or affected by the regulation of the practice of psychology, including faculty members of college or university psychology departments and licensees with varying levels of experience.

(c) The work group shall:

(1) review audiotapes of passed or failed examinations;

(2) review analyses of the performance of persons who failed the examination provided under §501.256(e) of the Act;

(3) assess scoring criteria and clinical scenarios used in the administration of the examination;

(4) recommend improvements to standardize the administration of the examination; and

(5) conduct other appropriate tasks.

(d) The Chair of the Work Group will be appointed by the Board from among the consultants. The Chair will call the meetings of the consultants and direct the work group's activities.

(e) The Chair of the Board's Oral Examination Committee will serve as the Board's liaison to the oral examination work group. This Board member will communicate the mission, goals and tasks to the work group. This Board member will serve as a resource to the work group but will not directly participate in the evaluation of the oral examination. This Board member will be responsible for ensuring that the recommendations of the work group approved by the Board are implemented.

(f) The work group will report at least biennially to the board the group's recommendations for improving the consistency of the administration and objectivity of the oral examination. The board will modify the oral examination, as necessary, based on the work group's recommendations for the next administration of the oral examination.

(g) The first report of the work group must be submitted to the board no later than January 2006. Necessary modifications to the oral examination based on the recommendations of the work group must be made to the exam by the January 2007 examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.2

The Texas State Board of Examiners of Psychologists proposed amendment to §470.2, Definitions. This amendment is being proposed in adherence to changes made by the 79th Texas Legislature to the new Section 501.410(b) of the Act.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure public Board member representation on the Informal Settlement Panels. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise;

(1) - (12) (No change.)

(13) Disciplinary Review Panel--Committee appointed by the Chair , including at least one public member, to conduct informal settlement conferences concerning disciplinary actions and to make recommendations to the Board.

(14) - (26) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §470.21

The Texas State Board of Examiners of Psychologists proposed amendment to §470.21, Disciplinary Guidelines. This amendment is being proposed to implement the statutory changes in HB 1015, 79th Legislative Session concerning placement of a specific Schedule of Sanction in the Board rules.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the Board's options for disciplinary actions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.21. Disciplinary Guidelines.

(a) Purpose. The Purpose of the guidelines is to:

(1) - (3) (No change.)

(b) Limitations. The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act. The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations. A sanction should be consistent with sanctions imposed in other similar cases and should reflect the board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law. This chapter shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial

measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

~~[(b) Limitations. This rule will be construed and applied so as to preserve Board members' discretion in the imposition of sanctions and remedial matters pursuant to Psychologists' Licensing Act, Subchapters I and K. This rule shall be further construed and applied so as to be consistent with the entire Psychologists' Licensing Act and shall be limited to the extent as otherwise proscribed by state law and Board rule.]~~

(c) Revocation. The Board shall revoke the license of any licensee if the Board determines that the continued practice of psychology by the licensee poses a harm to the public. Licensees who violate the following Board rules shall be subject to revocation without reference to subsections (e) through (g) ~~[(i)]~~ of this section:

(1) §465.13(b)(3) and (b)(6) pertaining to certain forms of sexual impropriety with current patients;

(2) §465.33(d) as it pertains to sexual relations, defined in §465.33(c), with current patients; and

(3) §469.7(d)(5), (d)(8), and (d)(10) pertaining to certain felony convictions and judgments. ~~[judgements]~~

(d) - (g) (No change.)

~~[(h) Aggravation. The following may be considered as aggravating factors so as to merit more severe or restrictive sanction or action by the Board:]~~

~~[(1) Patient harm and the type and severity thereof;]~~

~~[(2) Economic harm to any individual or entity and the severity thereof;]~~

~~[(3) Increased potential for harm to the public;]~~

~~[(4) Attempted concealment of misconduct;]~~

~~[(5) Premeditated conduct;]~~

~~[(6) Intentional misconduct;]~~

~~[(7) Prior written warnings or written admonishments from any supervisor or governmental agency or official regarding statutes or regulations pertaining to the licensee's practice of psychology;]~~

~~[(8) Prior misconduct of a similar or related nature;]~~

~~[(9) Disciplinary history;]~~

~~[(10) Likelihood of future misconduct of a similar nature;]~~

~~[(11) Violation of a Board order;]~~

~~[(12) Failure to implement remedial measures to correct or alleviate harm arising from the misconduct;]~~

~~[(13) Lack of rehabilitative potential;]~~

~~[(14) Motive; and,]~~

~~[(15) Any relevant circumstances or facts increasing the seriousness of the misconduct.]~~

~~[(i) Extenuation and Mitigation. The absence of the circumstances listed as subsection (g)(1) - (10) of this section, as well as the presence of the following factors, may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive sanctions or actions by the Board:]~~

~~[(1) Self-reported and voluntary admissions of misconduct;]~~

~~[(2) Implementation of remedial measures to correct or mitigate harm arising from the misconduct;]~~

~~[(3) Motive;]~~

~~[(4) Rehabilitative potential;]~~

~~[(5) Prior community service;]~~

~~[(6) Relevant facts and circumstances reducing the seriousness of the misconduct; and,]~~

~~[(7) Relevant facts and circumstances lessening responsibility for the misconduct.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §470.22

The Texas State Board of Examiners of Psychologists proposed new rule §470.22, Schedule of Sanctions. This new rule is being proposed to implement the statutory changes in HB 1015, 79th Legislative Session concerning placement of a specific Schedule of Sanction in the Board rules.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the Board's options for disciplinary actions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.22. Schedule of Sanctions.

(a) These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Psychologists' Licensing Act and Board Rules of conduct. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish

violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined below shall apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §470.23 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The standard and minimum sanctions outlined below are applicable to first time violators. The board shall consider more severe sanctions if the person is a repeat offender.

(3) The maximum sanction in all cases is revocation of the license, which may be accompanied by an administrative penalty of up to $1,000 per violation. In accordance with §501.452 of the Act, each day the violation continues is a separate violation.

(4) Each violation constitutes a separate offense, even if arising out of a single act.

(5) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced. Furthermore, additional, case-specific conditions may be introduced in an agreed order.

(6) Failure to list a type of violation or Board Rule in this rule does not enjoin or prevent the Board from taking disciplinary action for such a violation.

(b) The following standard sanctions shall apply to violations of the Act and Rules:

(1) Reprimand, assessment of up to $1,000 in administrative penalties per violation per day, administrative costs, and continuing education in the appropriate areas for the following offenses:

(A) repeated failure to timely report continuing education (461.11);

(B) basic supervision violation (Rule 465.2);

(C) advertising or specialty title violations (Rule 465.6);

(D) informed consent (Rule 465.11);

(E) misuse of professional services by a third party (Rule 465.14);

(F) fee and third party financial arrangements (Rule 465.15);

(G) technical teaching violations (most of Rule 465.19);

(H) technical research violations (Rule 465.20(a));

(I) records violations (Rule 465.22);

(J) providing services to those served by others (Rule 465.34);

(K) technical violation of some other law pertaining to the practice of psychology (Rule 465.37);

(L) technical violations of supervision rules and other laws pertaining to school psychology (Rule 465.38); and

(M) failure to post complaint notice or inform another about the Board's complaint process (Rule 469.2).

(2) Probated suspension, monitoring of professional practice by independent professional, assessment of up to $1,000 in administrative penalties per violation per day, administrative costs, and continuing education in the appropriate areas for the following offenses:

(A) employment of unlicensed and non-exempt individuals (Rule 465.4);

(B) one-time incompetence, including violations related to evaluations, testing, use of professional judgment, forensic services, or treatment plans (includes Rules 465.9, 465.10, 465.16, 465.17, 465.18, and 465.25);

(C) breach of confidentiality (Rule 465.12);

(D) sexual harassment of any type (Rule 465.33(c));

(E) dual relationships, conflicts and personal problems (Rule 465.13);

(F) improper termination, abandonment of clients, and disposition of a professional practice (Rules 465.21 and 465.32); and

(G) failure to remedy or report a violation of the Rules by another (Rule 465.35).

(3) Actual suspension for a period of time, followed by a period of probated suspension with the terms and conditions outlined in paragraph (2) for the following offenses:

(A) Sexual relationship with prohibited classes other than current patients (former patients, students, supervisees) or any type of sexual impropriety (Rule 465.33);

(B) Commission of a crime listed in Board Rule 469.7, other than those that lead to automatic revocation as outlined in Rule 470.21;

(C) Use of alcohol or drugs in a way that impairs professional competency, as outlined in Section 501.401(3) of the Act; and

(D) Failure to abide by a Board order, as outlined in Rule 461.15.

(4) The types of violations that would automatically lead to revocation are enumerated in Rule 470.21 and are not subject to aggravating or mitigating circumstances. These offenses include sexual relationships with current patients, severe criminal offenses, and fraud in obtaining a license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §470.23

The Texas State Board of Examiners of Psychologists proposed new rule §470.23 Aggravating and Mitigating Circumstances. This new rule is being proposed to implement the statutory changes in HB 1015, 79th Legislative Session concerning placement of a specific Schedule of Sanction in the Board rules.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the Board's options for disciplinary sanctions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.23. Aggravating and Mitigating Circumstances

(a) Aggravation. The following may be considered aggravating factors meriting more severe or restrictive sanctions or actions by the Board.

(1) Patient harm and the type and severity thereof;

(2) Economic harm to any individual or entity and the severity thereof;

(3) Increased potential for harm to the public;

(4) Attempted concealment of misconduct;

(5) Premeditated conduct;

(6) Intentional misconduct;

(7) Prior written warnings or written admonishments from any supervisor or governmental agency or official regarding statutes or regulations pertaining to the licensee's practice of psychology;

(8) Prior misconduct of a similar or related nature;

(9) Disciplinary history;

(10) Likelihood of future misconduct of a similar nature;

(11) Violation of a Board order;

(12) Failure to implement remedial measures to correct or alleviate harm arising from the misconduct;

(13) Lack of rehabilitative potential;

(14) Motive; and

(15) Any relevant circumstances or facts increasing the seriousness of the misconduct.

(b) Extenuation and Mitigation. The absence of the circumstances listed as subsection (a)(1)-(15) of this section, as well as the presence of the following factors, may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive sanctions or actions by the Board:

(1) Self-reported and voluntary admissions of misconduct;

(2) Implementation of remedial measures to correct or mitigate harm arising from the misconduct;

(3) Motive;

(4) Rehabilitative potential;

(5) Prior community service;

(6) Relevant facts and circumstances reducing the seriousness of the misconduct; and

(7) Relevant facts and circumstances lessening responsibility for the misconduct.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503262
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.3

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.3, Annual Renewal Fees (Not Refundable). This amendment is being proposed to facilitate an increase in the appropriation budget set forth by the 79th Legislature.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to adhere to state laws. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§473.3. Annual Renewal Fees (Not Refundable).

(a) Psychological Associate Licensure--$96 [~~$91~~].

(b) Psychological Associate Licensure over the age of 70--$16.

(c) Provisionally Licensed Psychologist--$91 [~~$86~~].

(d) Provisionally Licensed Psychologist over the age of 70--$16.

(e) Psychologist Licensure--$187 [~~$181~~].

(f) Psychologist Licensure over the age of 70--$16.

(g) Psychologist Health Service Provider Status--$20.

(h) Psychologist Health Service Provider status over the age of 70--No Fee.

(i) Licensed Specialist in School Psychology--$39 [~~$34~~].

(j) Licensed Specialist in School Psychology over the age of 70--$14.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503263
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 305-7700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.30

The Texas General Land Office (GLO) proposes an amendment to §15.30, Certification Status of the Town of South Padre Island Dune Protection and Beach Access Plan. The amendment is proposed to certify as consistent with state law an amendment to the Dune Protection, Beach Renourishment, and Beach Access Plan (Plan) of the Town of South Padre Island (the Town), adopted as Ordinance No. 05-07 on May 4, 2005.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.10), a local government with jurisdiction over gulf beaches must submit its beach management plan and amendments to the plan to the GLO for certification. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

The Town's plan was adopted on October 5, 1994. The GLO subsequently certified amendments to the Town's plan adopted by the Board of Aldermen on May 7, 2003, as consistent with state law. The Town seeks approval of amendments to its Plan to modify the definition and location of the Historic Building Line (HBL) in its Plan in one specific area. The HBL is a line established by the Texas Attorney General that indicated the buildable depth line for construction of buildings or structures on or to the landward side of the line. The HBL was located on a map (drawn by Chas R. Hail Associates, Inc., Consulting Engineers, dated March 1981) provided by the Texas Attorney General and is on file with the Public Works Department of the Town of South Padre Island. The line was intended to retain a minimum of two hundred feet of open beach above the mean low tide line according to then available data.

The modification to the HBL is limited to its location on four lots identified as Lots 1, 2, 3, and 4 of Block 156, Padre Beach Subdivision, Section X as shown on the survey labeled and attached as Exhibit B to the Town's Plan Amendment. The existing HBL makes a right angle turn landward immediately south of the lots in question from an adjacent retaining wall. The site is the location of a motel, a facility that was in place before the HBL was drawn. For reasons unknown, the HBL was drawn directly through the structure when it was established in 1981. The proposed adjustment to the HBL at this location will remove the right angle and establish a line connecting the easternmost points of retaining walls on either side of the identified lots. The Town represented in its February 9, 2005, letter requesting the modification to the HBL that by permitting construction that eliminates the right angle, the potential for beach erosion and dune damage caused by a vortex of wave action is reduced at the location. The area between the existing HBL and the adjusted line is occupied by the existing structure and dunes and dune vegetation. The Town further represented in its February 9, 2005, letter that adjustment of the HBL at this location will preserve a minimum of 200 feet or more of beach from the HBL to a point above mean low tide at all times, and will not result in an encroachment on the public beach. The GLO finds that the proposed amendments to the Town's Plan provide an equal or better level of protection of dunes, dune vegetation, and public access to and use of the public beach. Accordingly, the GLO proposes to certify the amendment to the Dune Protection, Beach Renourishment, and Beach Access Plan (Plan), adopted by the Board of Aldermen of the Town of South Padre Island as Ordinance No. 05-07 on May 5, 2005.

Certification of the Plan shall not be considered in any manner as a waiver of rights of the GLO concerning any failure by the Town to comply with its certified plan and amendments thereto, the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

Mr. Sam Webb, Deputy Commissioner for the Coastal Resources Program area, has determined that for the first five-year period that the amendment is in effect there will be no fiscal implications for state and local government.

Mr. Webb has also determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the amended section will be that the approved plan provides for preservation and enhancement of public beach use and dune protection. There are no additional economic costs of compliance for small or large businesses or individuals required to comply with the section as amended. The Texas General Land Office has determined that the proposed rule change will have no local employment impact that requires an impact statement pursuant to the Government Code §2001.022.

The proposed amendment to certify the Town's Dune Protection and Beach Access Plan is subject to the Texas Coastal Management Program (CMP), as provided in 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the Coastal Management Plan, and must be consistent with the applicable CMP goals and policies under §501.14(k), relating to Construction in the Beach/Dune System. The GLO has reviewed this proposed

action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed action is consistent with the GLO Beach/Dune regulations that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed action is consistent with the applicable CMP goals and policies. The proposed amendment will be distributed to council members in order to provide them an opportunity to provide comment on the consistency of the proposed rulemaking during the comment period.

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to §15.30 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §61.011 and §61.015(b), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas; and Texas Natural Resources Code §63.121 which provides the GLO with authority to adopt rules for the protection of critical dune areas.

The GLO has evaluated the proposed rulemaking to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings impact assessment required. The GLO has determined the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined the proposed rule amendment would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment being proposed.

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to deborah.cantu@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendment is proposed under the Texas Natural Resources Code §61.011 and §61.015(b), which provide the Texas General Land Office with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches and Texas Natural Resources Code §63.121 which provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

Texas Natural Resources Code §§61.011, 61.015(b), and 63.121 are affected by the proposed amendment.

§15.30 Certification Status of Town of South Padre Island Dune Protection and Beach Access Plan.

(a) The Town of South Padre Island has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The town's plan was adopted on October 5, 1994.

(b) The General Land Office certifies that the amendment to the town's plan adopted by the Board of Aldermen on May 7, 2003, is consistent with state law.

(c) The General Land Office further certifies that the amendment to the town's plan adopted by the Board of Aldermen as Ordinance No. 05-07 on May 4, 2005, is consistent with state law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503278
Larry L. Laine
Chief Clerk
General Land Office
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 305-8598

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (the commission) proposes amendments to §§85.21, 85.41, and 85.45, concerning placement planning and movement without program completion.

The amendment to §85.21 updates the reference to §85.45 in order to reflect the current rule title.

The amendment to §85.41 excludes certain violent offenders from eligibility for parole release under provisions of this rule. The amendment also expands the applicability of the rule to include youth who have been returned to a high restriction placement through a due process hearing and youth who are assessed as priority 1 for specialized treatment. Additionally, the amended section will no longer include definitions or requirements explained elsewhere in agency rules. The amended section also includes a reduced timeline for release on parole of youth eligible under this rule, from 45 days after completion of the exit review, to 30 days.

The amendment to §85.45 excludes certain violent offenders from release due to overpopulation. Also added to §85.45 is a requirement for director-level authorization in order to invoke population control releases at 3% above budgeted capacity.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be ensuring completion of the Resocialization program for certain violent offenders, efficient use of agency resources, and timely parole release of eligible youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.21

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§85.21. Program Assignment System.

(a) (No change.)

(b) Applicability.

(1) - (3) (No change.)

(4) For specifics regarding completion of program and movement to another program, and for specifics on movement of sentenced offender options, refer to the following rules:

(A) - (E) (No change.)

(F) §85.41 of this title (relating to Maximum Length of Stay [~~for Other Than Type A Violent and Sentenced Offenders~~]).

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503282
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 424-6014

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SUBCHAPTER C. MOVEMENT WITHOUT PROGRAM COMPLETION

37 TAC §85.41, §85.45

The amendments are proposed under the Human Resources Code, §61.081, which provides the commission with the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by the commission.

The proposed rules affect the Human Resources Code, §61.034.

§85.41. Maximum Length of Stay [~~for Other Than Type A Violent and Sentenced Offenders~~].

(a) Purpose. The Resocialization program is designed for youth who reasonably apply themselves to complete the program within their assigned minimum length of stay. There are, however, a small number of resistant youth who do not complete the Resocialization program within their minimum length of stay. When the length of institutional stay for these youth becomes disproportionate relative to the severity of their committing offense and level of risk to the community, provision must be made for release to Texas Youth Commission (TYC) parole prior to completion of the [~~to cut short their~~] Resocialization program in high restriction placement. [~~the institution and plan for their supervision and services on parole.~~]

(b) Applicability. This rule does not apply to:

(1) youth whose assignment is to a placement of other than high restriction; or[~~any other movement without program completion;~~]

[~~(2) youth who have completed program requirements. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders);~~]

[~~(3) priority 1 youth who are eligible for admission to specialized treatment programs;~~]

[~~(4) youth who have been returned to high restriction through a due process hearing;~~]

(2) [~~(5)~~] Type B violent offenders classified for manslaughter, criminally negligent homicide or intoxication manslaughter, [~~Sentenced or~~] Type A violent offenders or sentenced offenders as defined in §85.23 of this title (relating to Classification); and

(3) [~~(6)~~] youth who are unable to progress further in the agency's rehabilitation program because of mental illness or mental retardation and who have completed their minimum lengths of stay. See §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(c) Explanation of Terms Used.

(1) Exit review/interview--means a review of documentation to determine whether the youth meets the requirements of this rule for release under parole supervision. In TYC high restriction facilities the exit review is conducted by the Special Services Committee and in contract care programs it is conducted by the quality assurance supervisor.

(2) [~~(1)~~] General Offender--means a youth who is classified as a general offender as defined in §85.23 of this title and has never been classified as a sentenced or Type A violent offender.

(3) [~~(2)~~] Type B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, and Firearms Offender--means a youth who meets the definition in §85.23 of this title and has never been classified as a sentenced or Type A violent offender.

(4) [~~(3)~~] Minimum Length of Stay--means the assigned minimum length of stay for the youth's classification, see §85.23 of this title, plus any disciplinary extensions to the minimum length of stay. See §85.25 of this title (relating to Minimum Length of Stay). For youth who are returned to a high restriction facility with no minimum length of stay, the admission date will be treated as the date the youth has completed the minimum length of stay under this rule.

(5) Special Service Committee (SSC)--The SSC is a standing committee that consists of at least five (5) members and must include:

(A) Director of Clinical Services (DOCS), Chairperson;

(B) Program Administrator (1 to 3); and

(C) Principal.

[(4) Individual Case Plan (ICP)--the individualized plan for each youth that assesses a youth's needs and strengths, identifies objectives with specific strategies to address both needs and strengths, and is reviewed and adjusted as the youth progresses or as new needs are identified.]

[(5) Special Services Committee (SSC) exit review--is a process by which the SSC determines whether the youth meets program completion criteria and whether the release ICP adequately addresses the youth's identified risk factors for re-offending.]

[(6) Release Packet--includes specific documents for review and approval prior to a youth's release. The release packet includes the following information:]

[(A) psychological evaluation (if SSC determines it is necessary);]

[(B) release plan;]

[(C) home assessment, if applicable;]

[(D) incident summary;]

[(E) specialized treatment summary, if applicable; and]

[(F) victim involvement information, if applicable.]

[(d) General Requirements.]

[(1) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).]

[(2) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.]

[(3) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).]

[(4) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to notify parents or guardians of any movement.]

(d) [(e)] Criteria for Release to TYC Parole.

(1) For General Offenders. General offenders who have completed their minimum length of stay, but have not earned phase 4 on all three components of Resocialization, see §87.3 of this title (relating to Resocialization Phase Requirements and Assessment[Program]), will be released to TYC parole (home or home substitute) when the requirements in subsection (e) of this section and the following [requirements] are met:

[(A) no confirmed Category I rule violations through a due process hearing within 90 days prior to the SSC exit review and during the approval process;]

(A) [(B)] four (4) months have elapsed since completion of the minimum length of stay and currently on [a current assessment of], at a minimum, Resocialization phase A3, B3, C3; or

(B) [(C)] eight (8) months have elapsed since completion of the minimum length of stay and currently on [a current assessment of], at a minimum, Resocialization phase A2, B2, C2; or

(C) [(D)] 12 months have elapsed since completion of the minimum length of stay and currently on [a current assessment of], at a minimum, Resocialization phase A1, B1, C1.

(2) For Type B Violent Offenders, Chronic Serious Offenders, Controlled Substances Dealers, and Firearms Offenders. Type B violent offenders (with the exception of youth classified for manslaughter, criminally negligent homicide or intoxication manslaughter), chronic serious offenders, controlled substances dealers, and firearms offenders who have completed their minimum length of stay, but have not earned phase 4 on all three components of Resocialization, see §87.3 of this title, will be released to TYC parole when the requirements in subsection (e) of this section and the following [requirements] are met:

[(A) no confirmed Category I rule violations within 90 days prior to the SSC exit review and during the approval process;]

(A) [(B)] eight (8) months have elapsed since completion of the minimum length of stay and currently on [a current assessment of], at a minimum, Resocialization phase A3, B3, C3;

(B) [(C)] 12 months have elapsed since completion of the minimum length of stay and currently on [a current assessment of], at a minimum, Resocialization phase A2, B2, C2; or

(C) [(D)] 18 months have elapsed since completion of the minimum length of stay and currently on [a current assessment of], at a minimum, Resocialization phase A1, B1, C1.

(e) Timing of Exit Review and Release Date.

(1) An exit review is conducted within 14 calendar days after the youth meets criteria for release to TYC parole under this rule.

(2) The release of youth who meet the requirements for release to TYC parole under this rule must take place within 30 calendar days of the exit review.

(f) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the release.

[(f) Decision Authority for Approval of Release.]

[(1) The final decision authority shall approve the youth's release plan upon a determination that the youth meets the required criteria as set forth in subsection (e) of this section and the release ICP adequately addresses risk factors.]

[(2) A youth shall be released to TYC parole (home or home substitute) within 45 days of the SSC exit review validating release eligibility. Upon the approval by the final decision authority, additional time may be granted up to 30 days as the need indicates.]

[(3) The final decision authority is the Department of Sentenced Offenders Disposition, unless the superintendent or quality assurance supervisor appeals the decision. If the decision is appealed, the appropriate director of juvenile corrections is the final decision authority.]

§85.45. Movement Without Program Completion.

(a) (No change.)

(b) Applicability. This rule does not apply to:

(1) disciplinary movements, see Chapter 95, Subchapter A of this title (relating to Disciplinary Practices); and

(2) non-sentenced offenders at age 21 who have not met program completion criteria, see §85.95 of this title (relating to Discharge/Transfer of Custody).

[(1) This rule does not apply to sentenced offenders.]

[(2) This rule does not apply to disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).]

(c) General Requirements.

[(1) Program staff will explain program completion criteria to every youth during orientation to each placement.]

[(2) Non-sentenced offenders shall by law, be discharged prior to the youth's 21st birthday. Refer to §85.95 of this title (relating to Discharge/Transfer of Custody).]

(1) [(3)] Prior to a transition, a youth may request and in doing so will be granted a Level II hearing.

(2) A plan to minimize risk factors for re-offending shall be developed for each youth prior to release, unless youth is to be discharged.

(3) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to (GAP) §85.79 of this title (relating to Parole of Undocumented Foreign Nationals).

(4) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(6) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(d) Transition Movements.

(1) - (3) (No change.)

(4) Decision Authority for Approval of Transition.

(A) (No change.)

[(B) The appropriate director of juvenile corrections must approve any modification to the transition/release plan.]

[(C) A youth shall be transitioned to medium restriction within 14 calendar days of the exit review, regardless of whether or not the release plan is complete. However, if the youth does not meet the program completion criteria at the time of transition or release, the youth will not be transitioned.]

[(D) With approval from the appropriate director of juvenile corrections, additional time may be granted beyond the 14 calendar days, but not to exceed 30 calendar days from the exit review, as needed to address serious concerns related to the well-being of the youth and/or the community.]

(B) [(E)] The final decision authority is:

(i) the superintendent, for youth assigned to TYC-operated placements; or

(ii) the quality assurance supervisor [administrator], for youth assigned to contract care placements.

(e) Population Control Releases. When overpopulation occurs in any high restriction facility, certain remedial actions are taken. The deputy executive director may cancel or revise any population control measure in effect or implement any other youth movement option when necessary to control population and/or manage available funds concerning youth in residential placement.

(1) Overpopulation Condition.

(A) When population reaches three percent (3%) above budgeted capacity for general population [(excludes youth in specialized treatment)], the superintendent may invoke population control release procedures, upon the approval of the appropriate director of juvenile corrections.

(B) When population reaches five percent (5%) above budgeted capacity for general population, the superintendent shall: [invoke population control release procedures.]

(i) invoke population control release procedures; and

(ii) notify the appropriate director of juvenile corrections.

(2) Release Criteria.

(A) The following youth are ineligible for population control release:

(i) - (ii) (No change.)

(iii) Type B violent offenders whose classification is for manslaughter, criminally negligent homicide or intoxication manslaughter;

(iv) [(iii)] Priority 1 specialized treatment youth (unless waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections); or

(v) [(iv)] Sex offenders with court orders deferring their sex offender registration requirements.

(B) (No change.)

(f) - (h) (No change.)

[(i) Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders. Youth who do not complete the Resocialization program within the minimum length of stay, and the length of institutional stay becomes disproportionate relative to the severity of their committing offense, may be considered for movement without program completion. See §85.41 of this title (relating to Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders).]

(i) [(j)] Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar [working] days prior to the transition or release.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503283

Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §370.1, concerning License Renewal. The amendment will add language for online renewal and continuing education requirements for reservist called to active service in the military.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§370.1. License Renewal.

(a) Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license or renewal certificate in hand. If a license expired after all required items are submitted but before the licensee received the renewal certificate, the licensee may not provide occupational therapy services until the renewal certificate is in hand.

(1) General Requirements. The renewal application is not complete until the board receives all required items. The components required for license renewals are:

(A) Signed renewal application form or online equivalent verifying completion of 30 hours of continuing education, see Chapter 367 of this title (relating to Continuing Education);

(B) - (C) (No change.)

(2) Notification of license expiration. The Board will send notification [~~mail an application~~] to each licensee at least 30 days prior to the license expiration date. However, the licensee is responsible for ensuring that the license is renewed. [~~Licensees should contact the board if they do not receive a renewal application approximately 30 days prior to the expiration date.~~]

(3) Late Renewals. A renewal application is late if all required materials are not postmarked prior to the expiration date of the license. Licensees who do not complete the renewal process prior to the expiration date are subject to late fees as described.

(A) - (D) (No change.)

(E) A reserve status licensee who is called into active military service will have 6 additional months after release from active military service to submit proof of completion of the 30 required CE hours.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503270
John Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 305-6900

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1, concerning Provision of Services. The amendment will delete the requirement for co-signature of COTA notes and move the language concerning aides to the section concerning Supervision of Non-Licensed Personnel.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§372.1. Provision of Services.

(a) - (d) (No change.)

(e) Plan of Care.

(1) - (7) (No change.)

~~[(8) It is the OTR's or LOT's responsibility to ensure that all documentation which becomes part of the patient's/client's permanent record is approved and co-signed by the OTR or LOT and signed on the bottom of each page. Non-licensed personnel may not write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising OTR, LOT, COTA or LOTA. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising OTR, LOT, COTA or LOTA.]~~

(8) [~~(9)~~] Except where otherwise restricted by rule, the supervising OTR or LOT may only delegate to a COTA, LOTA or temporary licensee tasks that they both agree are within the competency level of that COTA, LOTA or temporary licensee.

(9) [~~(10)~~] The COTA or LOTA must include the name of his or her supervising OTR or LOT in each treatment note. If there is not a current supervising OTR or LOT, the COTA or LOTA cannot treat.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503271

John Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: September 18, 2005

For further information, please call: (512) 305-6900

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CHAPTER 373. SUPERVISION

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §373.1, concerning Supervision of Non-Licensed Personnel. The amendment will add language for when aides may or may not enter data into the patient's medical record.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§373.1. Supervision of Non-Licensed Personnel.

(a) - (e) (No change.)

(f) The non-licensed personnel may not:

(1) - (3) (No change.)

(4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising OTR, LOT, COTA or LOTA. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising OTR, LOT, COTA or LOTA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503272

John Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: September 18, 2005

For further information, please call: (512) 305-6900

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER J. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §§700.1001, 700.1003, 700.1005, 700.1007, 700.1009, 700.1011, 700.1013, 700.1015, 700.1017

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1001, 700.1003, 700.1005, 700.1007, 700.1009, 700.1011, 700.1013, 700.1015, and 700.1017, concerning the Relative and Other Designated Caregiver Program,

in its Child Protective Services chapter. Senate Bill 6 of the 79th Legislature required implementation of a Relative and Other Designated Caregiver Program by March 1, 2006, to provide initial transitional payments, annual reimbursements for expenses, and support services to certain non-licensed individuals who provide care to children in their extended family. Traditionally, relatives who provide placement services for children in DFPS custody have not received specific financial compensation from the State, although some families and children have qualified for assistance under other criteria in other agencies. These rules outline the eligibility for these services, maximize the benefit to those most in need, and ensure that the provision of such services does not exceed the available dollars appropriated for the biennium.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The estimated cost to the state as a result of the change will be $2,927,506 for fiscal year 2006; $5,910,552 for fiscal year 2007; $6,383,397 for fiscal year 2008; $6,894,068 for fiscal year 2009; and $7,445,594 for fiscal year 2010. Over time, it is anticipated that foster care expenses will be reduced as more children reside with relative or other designated caregivers rather than in paid foster care. At this time, cost savings are unable to be determined. All payments, reimbursements, and support services are subject to available funds. There will be no fiscal implications for local government.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that relatives and other designated caregivers will receive some reimbursement for their care of children in DFPS conservatorship. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Audrey Deckinga at (512) 438-3238 in DFPS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-336, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

The new sections are proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services (DFPS); Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new sections implement the Family Code, Chapter 264, as amended by §1.62 of Senate Bill 6, 79th Legislature.

§700.1001. What is the Relative and Other Designated Caregiver Program?

The Relative and Other Designated Caregiver Program is an array of services designed to promote continuity and stability for children in the conservatorship of DFPS. The program is effective March 1, 2006, and includes support services and limited financial assistance for eligible caregivers who assume caretaking responsibility for children in DFPS conservatorship. Subject to availability of funds and eligibility requirements, caregiver assistance may include case management services, training, referrals to appropriate services and assistance programs, family counseling, child-care services, limited cash assistance, and other support services. Funding for this program is limited to the state and federal funds allocated to DFPS for this program.

§700.1003. What are the eligibility requirements for caregiver assistance?

(a) The children to be placed must be in the conservatorship of DFPS.

(b) The caregiver must:

(1) be related to the children or have a longstanding and significant relationship with the children;

(2) be formally approved by DFPS as a caregiver;

(3) sign and abide by a written caregiver assistance agreement, which includes a commitment to:

(A) be available as a continuing placement for the children for at least six months;

(B) participate in specialized kinship training as recommended and provided by DFPS;

(C) comply with DFPS requirements limiting or facilitating contact between the parents and the children;

(D) apply for other forms of assistance, including financial and medical, for which the children may be eligible; and

(E) comply with any other child specific requirements or limitations; and

(4) not be a licensed or verified foster home or group foster home.

§700.1005. What types of cash assistance are available?

(a) Subject to the availability of funds, eligible caregivers may receive two types of cash assistance:

(1) an initial, one-time cash payment of not more than $1,000 per sibling group to defray costs incurred for essential child care items at the time of placement; and

(2) an annual reimbursement of not more than $500 per child for DFPS approved child-related expenses. To receive this reimbursement the caregiver must provide verification of the expenditures in the form of receipts.

(b) DFPS may further clarify in policy specific conditions or criteria caregivers must meet to receive this cash assistance or any other services or benefits in connection with this program, including what costs incurred for essential child care items may be defrayed, what expenditures are appropriate for reimbursement, and situations where the full initial, one-time payment may not be awarded.

§700.1007. Are there additional eligibility restrictions for the initial, one-time cash payment?

Yes, caregivers meeting the eligibility requirements specified in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) are eligible only if:

(1) there have been no other caregivers paid under this provision on behalf of the same children;

(2) the caregiver is not eligible for supplemental financial assistance under the Grandparents Program, Human Resources Code, §31.0041;

(3) the household income of the caregiver does not exceed 300% of poverty, as determined by federal poverty guidelines; and

(4) the placement of the children by DFPS with the caregiver is made after March 1, 2006.

§700.1009. Who is eligible for the annual reimbursement?

Caregivers meeting the eligibility requirements specified in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) are eligible, including:

(1) caregivers that are entitled to the initial, one-time cash payment;

(2) subsequent caregivers that didn't qualify for the initial, one-time cash payment because a different caregiver was previously paid under this provision on behalf of the same children;

(3) caregivers that didn't qualify for the initial, one-time cash payment because the caregiver was eligible for supplemental financial assistance under the Grandparents Program; and

(4) caregivers with whom DFPS placed the children before March 1, 2006.

§700.1011. Are there additional eligibility restrictions for the annual reimbursement?

(a) Yes:

(1) the household income of the caregiver must not exceed 300% of poverty, as determined by federal poverty guidelines;

(2) the caregiver must continue to comply with the signed caregiver assistance agreement; and

(3) the children:

(A) must continue to be in the conservatorship of DFPS or the caregiver must be awarded permanent managing conservatorship after March 1, 2006, of children that were previously in the conservatorship of DFPS;

(B) must be in the caregiver's care at the time the expense is incurred; and

(C) must continue to be placed with the caregiver.

(b) The following limitations also apply to the reimbursements:

(1) If the annual reimbursement is paid to a previous caregiver on behalf of the same children, a subsequent caregiver is not eligible for reimbursement for the remainder of the year.

(2) If the placement occurred before March 1, 2006, the reimbursement is limited to expenses incurred after March 1, 2006.

(3) Caregivers subsequently appointed as permanent managing conservator are only eligible for three additional annual reimbursement payments, assuming all other eligibility requirements and restrictions are met.

§700.1013. Who is eligible for child-care services?

(a) To the extent funds are available, DFPS may provide child-care services to a caregiver who meets the requirements in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) if:

(1) all appropriate caregivers work outside the home 40 hours per week or more; and

(2) the caregiver is a resident of Texas.

(b) To monitor the spending of funds, a priority system among caregivers will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of child-care services is critical to maintaining the placement of the child with the caregiver; and

(2) at least one child placed by DFPS is under six years of age, or at least one child placed by DFPS has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

§700.1015. What rates will DFPS use to pay for child-care services?

The rates of child-care assistance will be determined by the established local rates set by Child Care Management Services.

§700.1017. Who is eligible for support services?

To qualify for available support services, a caregiver must meet the eligibility requirements in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) and be a resident of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503291
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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CHAPTER 720. 24-HOUR CARE LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§720.66, 720.233, 720.335, 720.406, and 720.905, concerning serious incident reporting requirements, reports and records, emergency reports and records in the independent foster group homes, and administrative reports and records, in its 24-Hour Care Licensing chapter. The proposed changes are the result of requirements in Senate Bill (SB) 6, 79th Legislature. The bill directs the Executive Commissioner to adopt rules to implement drug-testing requirements for residential child-care facilities. The proposed amendments change the former Department's name to reflect the Licensing Division, and require residential child-care facilities to inform Licensing after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five- year period the proposed sections will be in

effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the protection of children will be enhanced and the quality of care of children will improve. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Lizet Alaniz at (512) 438-4538 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-333, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER A. STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §720.66

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

§720.66. Serious Incident Reporting Requirements.

(a) The child-placing agency must report the following types of serious incidents to the Licensing Division [~~Texas Department of Protective and Regulatory Services (PRS's) licensing division~~] and the child's parents or managing conservator within 24 hours [~~by the next workday~~]:

(1) any incident where there are indications that a child in care may have been abused or neglected as defined by the Family Code;

(2) abusive activity among children in care including:

(A) non-consensual sexual activity between children of any age;

(B) consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in size or developmental level of the children;

(C) child to child behavior that results in observable physical injury and causes material impairment;

(3) abusive treatment by caregiver including non-accidental caregiver action which if chronic or intensified, could cause substantial harm to a child, such as a slap to the face, sexual verbalizations; exposing the anus, breast, or any part of the genitals; inappropriate kissing; provision of sexually oriented material to a child other than that used for appropriate sex education and counseling; touching a child in inappropriate ways; and providing drugs or alcohol to a child;

(4) incidents that result in critical injury or permanent disability of a child. A "critical injury" is defined as any life-threatening injury or one that results in hospital intensive care or the need for life-resuscitation methods. It includes any injury that is labeled as "critical" by appropriate medical personnel;

(5) a suicide attempt meaning any attempt by a child to take his own life using means or methods capable of causing serious injury or means or methods that the child believes capable of causing serious injury.

(b) The child-placing agency must report to the Licensing Division within 24 hours after learning of an allegation that a person who directly cares for or has access to a child has abused drugs within the past seven days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503284
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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SUBCHAPTER E. STANDARDS FOR FOSTER FAMILY HOMES

40 TAC §720.233

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

§720.233. Reports and Records.

(a) (No change.)

(b) The foster family home shall complete written incident reports concerning serious occurrences involving staff members, foster parents, or children. Each report shall include the date and time of occurrence, the staff members, foster parents, [~~member~~] or children involved, the nature of the incident, and the circumstances surrounding

it. A copy of the report shall be filed at the foster family home, and shall be available for review by [~~to the staff of the~~] Licensing staff [~~Branch~~].

(c) The following serious occurrences shall be reported to the Licensing Division [~~Branch~~] within 24 hours [~~or the next working day~~]:

(1) - (4) (No change.)

(d) (No change.)

(e) Disasters or emergency situations which require closure of the foster home, such as those caused by fire or severe weather, shall be reported to the Licensing Division [~~Branch~~] within 24 hours [~~or the next working day~~].

(f) The foster family home must report to the Licensing Division within 24 hours after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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SUBCHAPTER F. STANDARDS FOR FOSTER GROUP HOMES

40 TAC §720.335

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

§720.335. Emergency Reports and Records in the Independent Foster Group Homes.

(a) (No change.)

(b) The foster group home shall complete written incident reports concerning serious occurrences involving staff members, foster parents, or children. Each report shall include the date and time of occurrence, the staff members, [~~member~~] foster parents, or children involved, the nature of the incident, and the circumstances surrounding it. A copy of the report shall be filed at the foster group home and shall be available for review by [~~the~~] Licensing staff [~~of the Licensing Branch~~].

(c) The following types of serious occurrences shall be reported to [~~the~~] Licensing Division [~~Branch~~] within 24 hours [~~or the next working day~~]: suicide attempts, incidents of cruel or abusive treatment, incidents which critically injure or permanently disable a child, and death of a client.

(d) (No change.)

(e) Disasters or emergency situations which require closure of the living unit, such as fires or severe weather, shall be reported to the Licensing Division [~~Branch of the department~~] within 24 hours [~~or the next working day~~].

(f) The foster group home shall submit reports to the Licensing Division [~~Branch~~] of the department concerning:

(1) - (2) (No change.)

(g) The foster group home shall allow the Licensing Division [~~department~~] to visit and inspect the foster group home at all reasonable times (Texas Human Resources Code, Chapter 42).

(h) The foster group home's records shall be available and open for review by [~~the~~] Licensing staff [~~Branch~~].

(i) (No change.)

(j) The foster group home must report to the Licensing Division within 24 hours after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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SUBCHAPTER H. CONSOLIDATED STANDARDS FOR 24-HOUR CARE FACILITIES

40 TAC §720.406

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

§720.406. Administrative Reports and Records.

(a) Written reports must be completed for any serious incident involving staff or children. The date and time of the incident, the name(s) of the staff member(s) or [~~and/or~~] child(ren) involved, the nature of the incident, and the circumstances surrounding it must be included in the report. A copy of the report must be filed at the facility and available for Licensing [~~licensing~~] staff to review.

(b) The following types of serious incidents must be reported to the Licensing Division [~~licensing~~] and the child's parent or managing conservator within 24 hours [~~by the next workday~~]: suicide attempts; abusive treatment, including alleged abuse; incidents that critically injure or permanently disable a child; and a child's death.

(c) The facility must have current written policies and procedures to follow when a child is absent without permission. These policies and procedures must include:

(1) (No change.)

(2) actions staff members take to locate the child;

(3) procedures (including timeframes) staff members must follow to notify the parents or managing conservator and the appropriate law enforcement agency.

(d) If a child is not located [~~found~~], the absence without permission must be reported to the parent or managing conservator and to the appropriate law enforcement agency.

(e) (No change.)

(f) Disasters or emergencies that require any living unit to close must be reported to the Licensing Division within 24 hours [~~licensing by the next workday~~].

(g) The Licensing Division must be informed of any impending change of administrator and any impending change necessitating a change in the conditions of the license.

(h) The facility must report to the Licensing Division within 24 hours after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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SUBCHAPTER M. STANDARDS FOR EMERGENCY SHELTERS

40 TAC §720.905

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

§720.905. Reports and Records.

(a) (No change.)

(b) The emergency shelter must complete written reports concerning serious occurrences involving staff members or children. The emergency shelter must ensure that each report includes the date and time of occurrence, the staff members or children involved, the nature of the incident, and the circumstances. The emergency shelter must file a copy of the report at the shelter and make it available for review by Licensing staff [~~of the licensing branch~~].

(c) The emergency shelter must report the following types of serious occurrences to the Licensing Division [~~licensing branch~~] within 24 hours [~~or the next workday~~]:

(1) - (2) (No change.)

(3) incidents which critically injure or permanently disable a child; [~~and~~]

(4) death of a child; and [~~.~~]

(5) an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

(d) The emergency shelter must have written policies and procedures to be followed when a child is absent without permission, including the following:

(1) specific actions staff members must take to locate the child;

(2) procedures staff members must follow to notify parents or managing conservators and the appropriate law enforcement agency.

(e) If a child is absent without permission, the shelter must report his absence to the appropriate law enforcement agency and managing conservator or parents, if the emergency shelter knows the managing conservator's or parents' identity and how to contact them.

(1) The shelter must consider the absence of a child under 10 years old (chronological or developmental age, whichever is less) as absence without permission as soon as staff members responsible for the child's care do [~~does~~] not know where he is. The shelter must consider the absence of a child 10 years old or older as absence without permission when staff members responsible for the child's care do [~~does~~] not know his whereabouts for three hours.

(2) (No change.)

(f) (No change.)

(g) The emergency shelter must report to the Licensing Division [~~licensing branch~~] within 24 hours [~~or the next work day~~] disasters or emergency situations, such as fires or severe weather, requiring closure of a living unit in the emergency shelter.

(h) The administrator of the emergency shelter must submit reports to the Licensing Division [~~licensing branch~~] concerning any:

(1) - (2) (No change.)

(i) The emergency shelter must allow Licensing [~~department~~] staff to [~~visit and~~] inspect the emergency shelter at reasonable times.

(j) The emergency shelter must make records available for review at the facility by Licensing staff [~~of the licensing branch~~].

(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503288
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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CHAPTER 727. LICENSING OF MATERNITY FACILITIES

SUBCHAPTER A. STRUCTURE OF A MATERNITY HOME

40 TAC §727.111

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §727.111, concerning serious incident reports, in its Licensing of Maternity Facilities chapter. The proposed change will conform this chapter to the requirements imposed on residential child-care facilities as a result of Senate Bill (SB) 6, 79th Legislature. The bill directs the Executive Commissioner to adopt rules to implement drug-testing requirements for residential child-care facilities. The proposed amendment changes the former Department's name to reflect the Licensing Division, and requires the maternity homes to inform Licensing after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the protection of children will be enhanced and the quality of care of children will improve. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Lizet Alaniz at (512) 438-4538 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-333, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

§727.111. Serious Incident Reports.

The maternity home must:

(1) complete written reports for serious incidents involving facility staff members or clients within 24 hours of learning about the occurrence. Each report must include the date and time of the occurrence, the staff members or clients involved, the nature of the incident, and the surrounding circumstances.

(2) report the following types of serious incidents to the Licensing Division [~~Texas Department of Protective and Regulatory Services (TDPRS)~~] and to a minor client's parent or managing conservator within 24 hours [~~by the next workday~~]:

(A) - (E) (No change.)

(3) have written policies and procedures to follow when a client is absent without permission. These policies and procedures must include:

(A) (No change.)

(B) actions that maternity home staff members must take to locate the client; and

(C) procedures, including time frames, that maternity home staff members must follow to notify the parents or managing conservator of a minor client and the appropriate law enforcement agency.

(4) report when a minor client is not located [~~found~~]. Absence without permission must be reported to the client's parents or managing conservator and to the appropriate law enforcement agency.

(5) (No change.)

(6) report to the Licensing Division within 24 hours [~~TDPRS, by the next workday~~], disasters or emergencies, such as fires or severe weather, that requires any part of the facility in which clients reside to close.

(7) report to the Licensing Division within 24 hours after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503289
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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CHAPTER 745. LICENSING
SUBCHAPTER H. RESIDENTIAL CHILD-CARE MINIMUM STANDARDS
DIVISION 6. DRUG TESTING

40 TAC §745.4151

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §745.4151, concerning what drug testing policy must my residential child-care operation have, in its Licensing chapter. The proposed change is the result of requirements in Senate Bill (SB) 6, 79th Legislature. The bill directs the Executive Commissioner to adopt rules to implement drug-testing requirements for residential child-care facilities. New §745.4151 adds the drug testing provisions of SB 6, including a model drug testing policy. The model drug testing policy applies to employees that have direct contact with children in care. This policy does not apply to foster parents that are verified by child-placing agencies. Mandatory drug testing is required for (1) pre-employment, and the individual cannot have access to children until the drug test results are available; (2) all employees on a random and unannounced basis; and (3) employees who are alleged to be abusing drugs.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated cost of $6,250 for fiscal year 2006, $6,250 for fiscal year 2007, $6,250 for fiscal year 2008, $6,250 for fiscal year 2009, and $6,250 for fiscal year 2010. DFPS operates 11 certified child-placing agencies. Of approximately 400 DFPS staff that provide regulated child-placing activities, an average of 125 DFPS staff would require initial and random drug testing each year at a cost of $50 per test. There will be an annual cost of $6,250 to DFPS. These costs can be absorbed with existing resources. The rules will not require additional staff. There will be no fiscal implications for local government as a result of enforcing or administering the section.

An additional cost to the state may also result because residential child-care providers will have increased allowable expenses to be submitted on required cost reports. The additional costs may result in pressure to raise current provider rates that are paid by the state.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the protection of children will be enhanced and the quality of care of children will improve. For each of the first five years that the proposed section will be in effect, DFPS has determined that there will be increased costs to residential child-care operations. The variables impacting the cost of drug testing for an individual provider include the number of staff hired in a year, the number of staff caring for children and the number of staff that will be subject to drug testing as a result of specific allegations or evidence of drug use. The costs for drug testing per employee can range from $20 - $65 for a urine drug test, $23 - $60 for a saliva drug test, or $46 - $250 for a hair drug test. The additional costs could potentially impact rates charged to the public by these residential child-care operations, but that impact cannot be estimated by DFPS as child-care rates charged to the public are set at the discretion of the residential child-care providers.

Individuals may incur testing expenses and possible medical fees if an employee elects to challenge a drug test result.

Questions about the content of the proposal may be directed to Lizet Alaniz at (512) 438-4538 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-333, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the new section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

The new section is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new section implements the HRC §42.057, as amended by §1.104 of Senate Bill 6, 79th Legislature.

§745.4151. What drug testing policy must my residential child-care operation have?

(a) The Department of Family and Protective Services is required to adopt a model drug testing policy for residential child-care operations under the Human Resources Code, §42.057. Your residential child-care operation must either adopt the model drug Although this policy only covers drugs, coverage of alcohol may be included. The department recommends that an operation obtain legal advice before adopting and implementing any drug testing policy.

(b) Residential child-care operations must pay for any required drug tests, except as provided in subsection (c)(7) of this section.

(c) The mandatory criteria for the Model Drug Testing Policy For Residential Child-Care Operations follow.

(1) Purpose. (Name of residential child-care operation) has a vital interest in ensuring the safety of resident children through the appropriate drug testing of employees, while also protecting the rights of the employees.

(2) Scope. This policy applies to all employees of residential child-care operations, including child-placing agencies that

have direct contact with children in care. It also applies to volunteers and contracted employees that have direct contact with children in care. This policy does not apply to foster parents that are verified by child-placing agencies.

(3) Definitions. The following definitions apply to this section.

(A) Abusing drugs--The use of any:

(i) Drug or substance defined by the Texas Controlled Substances Act, Texas Health and Safety Code, Chapter 481; or

(ii) Prescription or non-prescription drug that is not being used for the purpose for which it was prescribed or manufactured.

(B) Drug testing--The scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens for detecting a drug.

(C) Random drug testing--A testing cycle that varies the frequency and intervals that specimens are collected for testing and selects employees in a random manner that does not eliminate already tested employees from future testing. The testing should ensure all employees are subject to random testing on a continuing basis.

(D) Good cause to believe the employee may be abusing drugs--A reasonable belief based on facts sufficient to lead a prudent person to conclude that the employee may be abusing drugs. Sufficient facts may include direct observations of the employee using or possessing drugs, or exhibiting physical symptoms, including but not limited to slurred speech or difficulty in maintaining balance; erratic or marked changes in behavior, including a decrease in the quality or quantity of the employee's productivity, judgment, reasoning, and concentration and psychomotor control, accidents, and deviations from safe working practices; or any other reliable information.

(4) Mandatory drug testing.

(A) All applicants that are intended to be hired for employment are subject to pre-employment testing, and may not provide direct care or have access to a child in care until the drug test results are available;

(B) All employees are subject to random, unannounced drug testing;

(C) Any employee that is the subject of a child abuse or neglect investigation, when DFPS determines there is "good cause to believe the employee may be abusing drugs", must be drug tested within 24 hours of notification by DFPS to the residential child-care operation;

(D) Any employee who is alleged to be abusing drugs must be tested within 24 hours, if there is "good cause to believe the employee may be abusing drugs."

(5) Drug testing procedures. All drug testing will:

(A) At a minimum screen for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP);

(B) Use one of the following drug-testing methods:

(i) A drug test performed by a certified laboratory;

(ii) A testing kit with proven rates of false positives below 2% and false negatives below 8% on all drugs screened; or

(iii) Another testing method for which there is scientific proof of accuracy comparable to either of the first two choices, such as saliva, hair, or spray drug testing;

(C) Ensure the integrity and identity of the specimen collected from the time of collection to the time of disposal to minimize the opportunity for an employee to adulterate or substitute a specimen; and

(D) Preserve the privacy and rights of the person tested. This includes safeguarding the results of any test and maintaining them, so they remain confidential and free from unauthorized access.

(6) Discipline.

(A) An applicant or employee's consent to submit to drug testing is required as a condition of employment, and the refusal to consent may result in refusal to hire the applicant and disciplinary action, including discharge, against the employee for a refusal;

(B) An employee who is tested because there is "good cause to believe the employee may be abusing drugs," may be suspended pending receipt of written test results and further inquiries that may be required;

(C) An employee determined through drug testing to have abused drugs is subject to discipline, up to and including discharge;

(D) An applicant for employment or an employee determined through drug testing to have abused drugs may not be employed in a position with direct contact with children in care if the employee presents a risk of harm to children; and

(E) An employee determined through drug testing to have abused drugs may be offered the opportunity to complete a rehabilitation program at the employee's expense.

(7) Appeal. An applicant or employee whose drug test is positive may, at the employee's expense:

(A) Have an opportunity to explain and offer written documentation why there is another cause for the positive drug test;

(B) Request that the remaining portion of the sample that yielded the positive results, if available, be submitted for an additional independent test, including second tests to rule out false positive results; and/or

(C) Submit the written test result for an independent medical review.

(8) Documentation.

(A) All applicants that are intended to be hired for employment and employees must be provided a copy of this policy and must sign a document consenting to these terms and conditions of employment.

(B) All drug test results will be kept for one year after an employee's last work day with the residential child-care operation, or until any investigation involving the person is resolved, whichever is later. The results must be available for review by Licensing Division within 24 hours of the request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503290

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 18, 2005
For further information, please call: (512) 438-3437

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

16 TAC §9.114

The Railroad Commission of Texas withdraws the proposed repeal to §9.114 which appeared in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1757).

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503197
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: August 2, 2005
For further information, please call: (512) 475–1295

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.1

The Commission on State Emergency Communications (CSEC) adopts the amendment to §255.1, concerning the statewide 9-1-1 Equalization Surcharge (the surcharge), with changes to the proposed text as published in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3388).

The change to the section (extending the effective date for implementing the rounding methodology) is less stringent than that originally proposed and therefore comports with the substantial compliance requirement of Government Code, §2001.035.

Rule 255.1 is adopted with amendments as part of the CSEC's Rule Review of Chapter 255 pursuant to Government Code, §2001.039. The rule continues to be essential to CSEC's operations and is required by statute.

As adopted, Rule 255.1 raises the surcharge from 0.6% to 1.0%; makes applicable the rounding methodology found in Texas Tax Code, §151.053 (which will not take effect until 180 days after the effective date of the rule); makes applicable Texas Tax Code, §151.025 when intrastate long distance services are not billed separately on a customer's bill; and makes two minor stylistic changes. Increasing the surcharge percentage is within the statutory limits set by Health and Safety Code, §771.072(a) and necessary to generate sufficient revenue to trigger the contingent funding appropriated to CSEC in Rider 4 of the agency's Fiscal Year 2006-2007 appropriation.

Comments were received from:

Bexar Metro 911 Network District (Bexar 911)

Texas Statewide Telephone Cooperative, Inc. (TSTCI)

Southwestern Bell Telephone, L.P. d/b/a SBC Texas (SBC Texas)

Texas Association of Regional Councils

Concho Valley Council of Governments

Central Texas Poison Center, Southeast Texas Poison Center, Texas Panhandle Poison Center, Texas Poison Center Network, West Texas Regional Poison Center

Bexar 911: Bexar 911 previously commented that legislation pending in the 79th Texas Legislature would, if passed, have changed the equalization surcharge from a percentage-based to a dollar-based cap, and changed the imposition of the surcharge from being on customers' intrastate long-distance service to being on each local exchange access line or wireless telecommunications connections.

CSEC Response: The legislation did not pass and therefore the proposed rule as amended is not impacted.

TSTCI: TSTCI previously commented that the effective date of the rule change should correspond to the effective date of any changes by the 79th Texas Legislature to the Tax Code in order to avoid having to make system changes twice in a short period of time.

CSEC Response: The CSEC is unaware of any changes to the Tax Code that would impact the rule.

SBC Texas: SBC Texas generally agrees with the amendments to Rule 251.1, but proposed that either the effective date be extended, or that CSEC grant carriers a grace period to allow time to implement the programming changes necessitated by the rule.

CSEC Response: SBC Texas' concerns involve implementing the rounding methodology found in the Tax Code which will require SBC Texas and other carriers to write and implement changes to their billing systems. SBC Texas' concerns are well-founded and as a result the CSEC added additional language to Rule 255.1 extending the effective date of the rounding provision to 180 days after the effective date of the remainder of the rule.

All Other Comments: All other commenters supported re-adoption of the rule as amended by the CSEC.

The amendment is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.072, 771.073, 771.074, 771.075, and 771.077, which authorizes the Commission to adopt rules, policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

§255.1. Statewide Equalization Surcharge.

An equalization surcharge is established in the amount of one percent (1.0%). Rounding of the surcharge amount shall be in compliance with Texas Tax Code, §151.053. This surcharge will be assessed to each customer receiving intrastate long-distance service, except those exempted by Texas Health and Safety Code, §771.074. The surcharge shall be applied to the total amount for intrastate long-distance service charged by the customer's service provider, but such amount shall not include taxes charged by local, state, and federal authorities, nor shall local, state, or federal taxes be applied to this surcharge unless otherwise required by law. Texas Tax Code, §151.025 shall apply when intrastate long-distance services are not billed separately on a customer's invoice. The effective date of the rounding provision in this rule shall be 180 days after the effective date of the remainder of the rule as determined by Texas Government Code, §2001.036.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2005.

TRD-200503277
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: August 28, 2005
Proposal publication date: June 10, 2005
For further information, please call: (512) 305-6933

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas adopts amendments, repeals, and new sections in 16 TAC Chapter 9, relating to LP-Gas Safety Rules. Sections 9.3, 9.7, 9.10, 9.17, 9.102, 9.103, 9.107, 9.134, 9.140, 9.143, and 9.308, relating to LP-Gas Report Forms; Application for License and License Renewal Requirements; Rules Examination; Designation and Responsibilities of Company Representatives and Operations Supervisors; Notice of Stationary LP-Gas Installations; Objections to Proposed Stationary LP-Gas Installations; Hearings on Stationary LP-Gas Installations; Connecting Container to Piping; Uniform Protection Standards; Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individuals or Aggregate Water Capacities of 4,001 Gallons or More; and Identification of Piping Installation, are adopted with changes from the proposed versions published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1730); the repeal of §9.114 is withdrawn; and the remaining sections are adopted without changes. Specifically, the Commission adopts in Subchapter A, relating to General Requirements, amendments to §§9.1, 9.2, 9.6, 9.8, 9.9, 9.11 - 9.13, 9.16, 9.18, 9.21, 9.22, and 9.26 - 9.28, relating to Application of Rules, Severability, and Retroactivity; Definitions; Licenses and Fees; Application for a New Certificate; Requirements for Certificate Renewal; Previously Certified Individuals; Trainees; General Installers and Repairman Exemption; Hearings for Denial, Suspension, or Revocation of Licenses or Certificates; Reciprocal Examination Agreements with Other States; Franchise Tax Certification and Assumed Name Certificates; Changes in Ownership, Form of Dealership, or Name of Dealership; Insurance and Self-Insurance Requirements; Application for an Exception to a Safety Rule; Reasonable Safety Provisions; the repeal of §9.33, relating to LP-Gas Welding Advisory Committee; new §9.35, relating to Written Procedure for LP-Gas Leaks; amendments to §§9.36 - 9.38, 9.41, 9.51, and 9.52, relating to Report of LP-Gas Incident/Accident; Termination of LP-Gas Service; Reporting Unsafe LP-Gas Activities; Testing of LP-Gas Systems in School Facilities; General Requirements for Training and Continuing Education; and Training and Continuing Education Courses; the repeal of §9.53, relating to Continuing Education Credit for Previous Courses; and amendments to §9.54, relating to Commission-Approved Outside Instructors.

In Subchapter B, relating to Stationary Installations and Container Requirements, the Commission adopts amendments to §§9.101, 9.109, 9.110, and 9.113, relating to Filings Required for Stationary LP-Gas Installations; Notice of Stationary LP-Gas Installations; Objections to Proposed Stationary LP-Gas Installations; Hearings on Stationary LP-Gas Installations; Physical Inspection of Stationary LP-Gas Installations; Emergency Use of Proposed Stationary LP-Gas Installations; Maintenance; amendments to §§9.115, 9.126, 9.129, 9.130, 9.132, 9.141, and 9.142, relating to Examination and Testing of Containers; Appurtenances and Equipment; Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; Sales to Unlicensed Individuals; Uniform Safety Standards; and LP-Gas Container Storage and Installation Requirements.

In Subchapter C, relating to Vehicles and Vehicle Dispensers, the Commission adopts amendments to §§9.201 - 9.203, relating to Applicability; Registration and Transfer of LP-Gas Transports or Container Delivery Units; School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; new §9.204, relating to Maintenance of Vehicles; the repeal of §9.207, relating to Requirements for Movable Fuel Storage Tenders Such as Farm Carts; and amendments to §9.208, and §9.211, relating to Testing Requirements; and Markings.

In Subchapter D, relating to Adoption by Reference of NFPA 54 (National Fuel Gas Code), the Commission adopts amendments to §9.303 and §9.312, relating to Exclusion of NFPA 54, §6.31, and Certification Requirements for Joining Methods.

In Subchapter E, relating to Adoption by Reference of NFPA 58 (LP-Gas Code), the Commission adopts amendments to §9.403, relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

The Commission also adopts the repeal of Subchapter F, relating to Adoption by Reference of NFPA 51 (Standard for the Design and Installation of Oxygen Fuel-Gas Systems for Welding, Cutting, and Allied Processes), including §§9.501 - 9.503, and 9.506 - 9.508, relating to Adoption by Reference of NFPA 51; Clarification and/or Exclusion of Definitions in NFPA 51; Exclusion of Certain Sections and Chapters 6, 7, and 8 in NFPA 51; Sections in NFPA 51 Adopted with Additional or Alternative Language; Container Installation Requirements; and LP-Gas Pressure Going into a Building.

The Commission adopts these amendments, repeals, and new rules to update some training and continuing education requirements, to clarify changes in Commission offices or procedures as a result of a reorganization of LP-gas activities among the AFRED, Gas Services, and Safety Division, to repeal some unnecessary rules, and to make other substantive and non-substantive amendments. The Commission adopts these amendments, new rules, and repeals with an effective date of September 1, 2005.

Non-substantive Amendments

Amendments to certain sections are non-substantive and are adopted for clarification. Section 9.1(a)(6) is deleted because it refers to Subchapter F regarding NFPA 51; the rules in Subchapter F are repealed (as discussed later in the preamble). Section 9.1(g) corrects references to NFPA 58.

The amendments in §9.3(13) proposed to delete a form that is no longer used by the Safety Division; however, the form is still used

by the audit staff, and this proposal is not adopted, as discussed in subsequent paragraphs.

In §9.9, specific references to AFRED are added; fees are stated to be nonrefundable; and subsection (c)(1) includes new wording stating that if a person's certification expires, that person shall immediately cease performance of any LP-gas activities authorized by the certification. This wording is currently found in §9.7(f) regarding expiration of licenses, and is added in §9.9 to apply to certifications.

Amendments in §9.12(a)(2) add a reference to AFRED and delete the reference to the rules examination fee being on file; that wording is unnecessary because of the options available for exam locations and payments.

In §9.16, several references to the License and Permit Section of the Gas Services Division are added, and two internal procedures are clarified.

Amendments in §§9.18, 9.21, 9.22, 9.26, 9.27, 9.28, 9.37, 9.38, 9.102, and 9.107 add references to the Gas Services Division, the License and Permit Section of the Gas Services Division, or the Safety Division, as appropriate. The amendments to §9.103 add a reference to the License and Permit Section of the Gas Services Division and correct one internal citation to another rule. Amendments in §§9.109, 9.110, 9.115, 9.129, 9.141, 9.203, and 9.211, add references to the Safety Division. The amendment in §9.303 corrects the title in a reference to 16 TAC Chapter 13, and §9.312 adds a reference to the Safety Division.

Clarifying and Substantive Amendments

Some sections include more substantive proposed amendments, but the Commission does not consider them to be controversial.

The amendments in §9.6, in conjunction with amendments to §9.13, add references to the License and Permit Section, and in subsection (c)(4) add wording regarding a new registration program with the Texas State Board of Plumbing Examiners and the Texas Department of Licensing and Regulations. The new wording states that master or journeyman plumbers, or Class A or B Air Conditioning and Refrigeration Contractors, as licensed respectively by these two agencies, may register with the Section as stated more fully in §9.13. The registration fee is $50 and the renewal fee is $20.

Changes in §9.7 add references to the License and Permit Section, and new wording requiring a 24-hour emergency response telephone number to be included on LPG Form 1; other amendments clarify that certain fees are nonrefundable. The Commission adopts some clarifying wording in subsections (d)(1) and (f) to state that the 24-hour number is required only for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4).

Amendments in §9.8 specify AFRED as the Commission office to receive the LPG Form 16 and clarify that fees are nonrefundable.

In §9.11, references to AFRED are added, as is a 10-calendar day period for a licensee to notify AFRED when a previously certified individual is hired; the current rule states this notification shall take place "immediately," which is not defined.

Section 9.13 includes wording for the new registration program with the Texas State Board of Plumbing Examiners and the Texas Department of Licensing and Regulations. The new wording states that master or journeyman plumbers, or Class A or B Air Conditioning and Refrigeration Contractors, as licensed respectively by these two agencies, may register with the Commission. This program was jointly agreed upon by the Commission and these two agencies as a way to recognize the skills and training of the individuals who perform LP-gas activities, as authorized by the three agencies. Registration with the Commission is an easier and cheaper way for these skilled workers to be recognized by the Commission as performing authorized LP-gas activities without the expense and time required to obtain a Category D license or renewal.

Changes to §9.36 add references to the Safety Division, amend subsection (a)(4) to ensure that damage has not occurred in an incident or accident involving an LP-gas vehicle, and add new subsection (a)(7) requiring the reporting to the Safety Division of any event involving LP-gas which is required to be reported to any other state or federal agency.

In §9.101(a), changes include a new sentence stating that LP-gas systems under the jurisdiction of DOT safety regulations in 49 CFR Parts 192 and 199, and Part 40 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service. In changes to subsection (b)(1), the 10-day period is changed to 30 days for submission of LPG Form 501 and a reference is added to the Gas Services Division. In subsection (b)(2), the resubmission charge is changed from $20 to $35; because additional time is being given, a higher resubmission fee is warranted. Wording in subsection (g) is deleted and moved to new subsection (c)(6) to properly place this requirement under the installations with aggregate water capacities of 10,000 gallons or more.

Section 9.114 was proposed for repeal because the odorization reports described in this rule are no longer used by the Safety Division; however, the repeal is not adopted because the odorization reports are used by the audit staff.

Section 9.126(a)(3) is amended to require all appurtenances and equipment placed into LP-gas service to be used and in compliance with any NFPA standard adopted by the Commission. In subsection (c), references to the Safety Division are added. Subsection (d) is deleted as unnecessary.

In §9.130, the changes include references to the Safety Division added throughout. In subsection (a)(2)(B), the Commission specifies a $60 fee plus mileage and rate from Austin as set by the official state travel mileage chart for a replacement nameplate; and in subsection (a)(2)(C), deletes a reference to hourly research fees.

Amendments in §9.140 add references to the Safety Division, and in subsection (d)(4) change the word "required" to "permitted" to make this situation permissive. The changes in the table in subsection (g) include one change in row 7, where the words "or storage" are added to the situation where lettering is required for cylinder exchange or storage racks. New subsection (g)(5) addresses signs for underground containers. In subsection (h)(3)(C), the six--high cement parking wheelstop was proposed to be changed to a four- height requirement, and proposed new wording would have added that it must be at least 12 es from the curb; in subsection (h)(3)(E), the 48- requirement was proposed to be increased to 60 es. As explained in subsequent paragraphs, however, and based on comments, the original requirements were retained and the new requirements added as an alternative.

Amendments in §9.142 correct references to some sections in NFPA 58.

Section 9.207 is repealed because the situation is covered in NFPA 58.

Amendments in §9.208 add references to the License and Permit Section, clarify a specific references to 49 CFR 180.407, and add a reference to 49 CFR Parts 100 - 185.

Sections 9.501 - 9.503, and 9.506 - 9.508 (all of Subchapter F) are repealed; these rules concern the adoption by reference of NFPA 51 relating to welding applications. Since the adoption by reference of NFPA 51, the Commission has adopted NFPA 58, which encompasses NFPA 51; therefore, the rules in this subchapter are no longer necessary.

Substantive and Possibly Controversial Changes

Section 9.2 includes two new definitions in paragraphs (6) and (50) for "bobtail driver" and "transport driver." The definitions will help differentiate between these types of vehicles, and will assist applicants and certificate holders to know which type of training or continuing education courses they need to complete. The definition of "assistant director" in current paragraph (6) is deleted; following the Commission's recent reorganization, this definition is no longer needed. Paragraph (3) contains non-substantive corrections to the definition of "AFT materials"; amendments to paragraphs (9) and (21) are clarified; paragraph (27) provides a definition for "MPS gas"; the definition is substantively the same as the definition for "MPS gas" currently in §9.502, which is repealed.

The definition for "operations supervisor" (renumbered to be paragraph (30)) was proposed to add the wording "and is authorized by the licensee to implement operational changes." The Commission proposed to add this wording to make clear that an operations supervisor must have the authority over the day-to-day LP-gas activities being supervised without having to obtain the licensee's approval. In the definition of "outlet" (renumbered to be paragraph (31)) the proposed change attempted to address a situation which has caused confusion in the past over whether an outlet "materially duplicates" the originally-licensed location. The changes will result in more locations being considered outlets. The Commission also proposed amendments to §9.17(a)(3) to allow an operations supervisor to supervise multiple outlets in certain situations; the amendments to §9.17 will be discussed in more detail in subsequent paragraphs of the preamble. The definitions for "operations supervisor" and "outlet" are adopted without changes from the proposal, but are clarified by changes adopted in §9.17(a)(3).

Other proposed amendments in §9.2 correct references to Commission offices or renumber existing definitions.

Several amendments are adopted in §9.10, Rules Examination. In subsection (a), the Commission proposes that examinations will no longer be offered at the Commission's headquarters building, but rather at the AFRED Training Center, 6506 Bolm Road, Austin, Texas. This location has available free parking, which will assist applicants in arriving on time for exams. The hours that exams will be offered are changed slightly to end at 12:00 noon; a Commission employee must be present during examinations, so the noon deadline will allow sufficient time for exam takers to complete the exams and allow Commission staff to perform other required job duties. AFRED recommends that individuals take exams on Tuesdays and Thursdays, which are more efficient for Commission staff. New subsection (a)(1) clarifies when and where exams will be given. Current subsection (a)(1) is deleted because it refers to admittance letters, which will no longer be needed. Amendments in subsection (a)(2) add Categories F, G, and J to Categories E and I as those which are required to complete management-level examinations and management-level courses of instruction. Proposed new wording would have clarified that the E, F, G, I, and J exams are given only in conjunction with those courses, and other exams are given at the AFRED Training Center and other locations statewide. Based on comments, more fully discussed in subsequent paragraphs, the adopted wording in this subsection has been modified.

New subsection (a)(3) requires applicants in categories that require a course of instruction to complete both the course and the required exam before a certification card will be issued. New subsection (a)(4) allows applicants two years to complete a required course of instruction after passing the management-level rules exam; after two years, the applicant must reapply as a new applicant. In subsection (a)(5) (renumbered from (a)(3)), amendments clarify that the fees are nonrefundable, add Categories F, G, and J, and correct an internal rule reference.

The Commission adopts several changes in the table in subsection (b). In the first row, the "delivery truck exam" is changed to "bobtail" exam to correspond with the new definition in §9.2 for "bobtail driver." The wording also includes the specific activities covered by this course. Row 6, which referred to manufactured housing technician exam, is deleted because there is only one individual currently certified in this category, and other examinations are available to cover this little-used category. In the row for "service and installation exam," the Commission deletes the word "entire," which is misleading, and adds references to "plus containers and appliances," which is more accurate. In the row for "appliance service and installation exam," Category N is added to the list of categories for which this course applies.

In subsection (c), AFRED will notify individuals of scores within 15 days, instead of 30 days. New subsection (c)(3) is added to require individuals to carry their certification cards with them as proof of certification if a Commission employee requests it. In subsection (d), individuals who fail an exam no longer have to request an analysis in writing. Subsection (d)(2) is deleted because it refers to admittance letters, which will no longer be used.

In §9.17(a)(1), the Commission adds a reference to the License and Permit Section. In subsection (a)(3), new wording is added in conjunction with the changes to the definition of "outlet" in §9.2 to allow an individual to be operations supervisor "at more than one outlet provided each outlet has a designated LP-gas certified employee who is responsible for the activities at that outlet." This change is made for safety reasons: if a Commission inspector finds a safety violation at an outlet, the inspector must be able to immediately locate that certified employee to take the outlet out of service, make repairs, or whatever other action may be necessary to address the safety situation. The Commission adopts additional wording that requires licensees to post the 24-hour emergency response telephone number at every outlet. These changes are discussed more fully in subsequent paragraphs.

In subsection (g), Categories F, G, and J are added to Categories E and I as those which may receive work experience substitution in certain instances. The Commission adopts additional wording in this subsection, for consistency, as discussed in subsequent paragraphs.

The Commission adopts the repeal of §9.33, concerning the welding advisory committee, which was formed before the Commission adopted NFPA 51 by reference, currently in Subchapter F. This committee has since disbanded, as its purpose was completed.

New §9.35 requires licensees to have written gas leak notification procedures in place and for their employees to know what these procedures are. The new rule requires that each licensee maintain a written procedure to be followed when any employee receives notification of a possible leak. The licensee must ensure that all employees are familiar with the procedure and must authorize employees to implement the procedure without management oversight. The written procedure must be available to emergency response agencies as specified in NFPA 58, 3.10.2.1, and as stated in Table 1 of §9.403 of this title.

Amendments in §9.41 clarify the use of pressure tests versus leakage tests or other inspections. The terms "pressure test" and "leakage test" are often used interchangeably; in fact, they are not the same. The Commission requires a pressure test for schools, so clarifying wording is adopted in subsection (b), in (b)(4), (e)(1), and (e)(2). References to the Safety Division are added in several places.

Amendments in §9.51 add references to fees being nonrefundable, add references to the License and Permit Section, add Category M to the list of categories requiring training for management-level and certain employee-level certificates, delete a reference to completing any AFT, add references to AFRED, and add Category J as requiring the 16-hour training course.

Amendments in §9.52 also add Category J and Category M as requiring certain training, change the name of "delivery truck employee-level" to "bobtail employee-level," and add recreational vehicle technician employee-level. In subsection (a), new wording addresses the only situation in which a training deadline is extended; an individual cannot retake and pass an examination in order to extend this deadline, but must complete the applicable training class. In subsection (b)(1)(B), new wording states that beginning September 1, 2005, Category M and recreational vehicle technician certificate holders have until May 31, 2006, to complete their initial continuing education requirements. The Commission adds Category M licensees and recreational vehicle technician certificate holders to that group of multiple certificate holders who, if they hold more than one certification as of February 1, 2001 (the original date of adoption of the continuing education requirements), must complete the continuing education requirement by the deadline assigned for the initial certificate.

The most extensive changes for the training and continuing education requirements are found in the four tables in subsection (g). The changes are addressed narratively as follows.

In Table 1, a date of September 2005 is added in the title to show when this table will become effective. Current course 2.2/2.4 is changed to 2.2, and the course title corrected; other course titles for 2.1, 2.3, 3.1, 3.2, 3.5, 3.11, 6.1, the 80-hour and 16-hour courses are also corrected. For courses 3.1, 3.2, 3.5, 3.7, 3.11, and the 16-hour Category F, G, I, and J management course, an "x" is added in the AFT column to indicate those courses will include AFT. New rows are added for new courses 3.3 and 3.8, with an "x" added in the appropriate columns for the categories to which these two new courses apply. A new column is added for Category M and an "x" added on the appropriate rows for the courses which apply to this new category. Finally, in the row for course 6.1, the current table shows an "x" only in the column for Category E; in the new table, this course may fulfill the requirements for all the categories.

In Table 2, the September 2005 date is added to the title of the table. The title of the "Delivery Truck/Service & Installation" category is changed to "Bobtail Service & Installation." Current course 2.2/2.4 is changed to 2.2, and the course title corrected; other course titles for 2.1, 2.3, 3.1, 3.2, 3.5, 3.11, and the 80-hour and 16-hour courses are also corrected. For courses 3.1, 3.2, 3.5, 3.7, 3.11, and the 16-hour course, an "x" is added in the AFT column to indicate these courses will include AFT. New rows are added for new courses 3.3 and 3.8, with an "x" added in the appropriate columns for the categories to which these two new courses apply. A new column is added for RV technician, and an "x" added on the appropriate rows for the courses which apply to this new category. With the addition of some new courses, the current courses have slight revisions as to who can take those courses to comply with the requirements for their category; in particular, the "x" in the current table is deleted for courses 2.1 and 2.2 for "Bobtail" and "Bobtail Service & Installation"; for course 2.3, for "Portable Cylinder Filling;" and for course 3.1, "Bobtail" and "Appliance Service & Installation." In the footnotes on Table 2, the references to "delivery truck" are changed to "bobtail," and the specific activities covered by the "Bobtail Driver" certification are added.

On Table 3, the September 2005 date is added to the title of the table. The Category M column is added. The AFT column is deleted because none of the CETP courses include AFT. Current CETP courses 2, 3, and 4 are split into several smaller courses, shown on the Table as CETP 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, and 4.2. The titles for courses 5 and 8 are corrected. Finally, on the row for CETP 8, the "x" in the column for Category K is deleted.

On Table 4, the September 2005 date is added to the title of the table. The RV Technician column is added. The AFT column is deleted because none of the CETP courses include AFT. Current CETP courses 2, 3, and 4 are proposed to be split into several smaller courses, shown on the Table as CETP 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, and 4.2. The titles for courses 5 and 8 are corrected. In the row for CETP 5, this course no longer applies to "Portable Cylinder Filling" or "Motor & Mobile Fuel," but now applies to "Bobtail," "Bobtail Service & Installation," and "Service & Installation." The PERC GAS Check course applies to "Bobtail." In the Note for this table, it is stated that CETP courses 2.4, 3, 3.6, and 3.7 are not accepted by the Commission for continuing education credit. Finally, in footnotes 2 and 3, the references to "delivery truck" are changed to "bobtail," and the specific activities covered by the "Bobtail" certification are added.

The Commission has been informed that CETP is in the process of also changing its courses 5, 6, 7, and 8, so other changes to this Table may be necessary in a future rulemaking.

Section 9.53 is repealed because it addresses situations where individuals could have received continuing education credit for attendance at previous courses that were held before the Commission's training and continuing education program was adopted. The rule included a four-year window, which has now passed; therefore, the rule is no longer necessary.

Section 9.54 includes mostly non-substantive proposed amendments including adding references to AFRED and adding new

subsection (a)(1)(C) to address outside instructors for Category M courses.

Amendments in §9.113 add "gas utilization equipment, and appliances" to the list of other items that must be maintained in "safe" working order. If any of these items is not in safe wording order, the Safety Division may require that the installation be removed from service until repairs are made. This amendment addresses situations in which, for example, an appliance may be working, but it is not working safely.

Amendments in §9.132 prohibit a licensee from selling an LP-gas container to an unlicensed individual for resale or installation without determining that such container will be installed by a licensee authorized to perform such installation. The Commission adopts an amendment adding that LP-gas shall not be sold for resale to an unlicensed individual as well. The Commission views the sale of LP-gas to an unlicensed individual for resale as more of a safety risk than selling a perhaps-empty LP-gas container. If an individual is going to sell or resell LP-gas, that individual must be properly licensed by the Commission.

New wording in §9.134 states that a licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22 with the Safety Division. This is because the Commission must be informed of LP-gas installations that may have been incorrectly or unsafely installed, especially if the Commission would not otherwise be aware of such installations; for example, members of a church may add on to the church building and pipe it to use LP-gas. The Commission adopts one clarifying change to state that the properly-completed LPG Form 22 must identify the unlicensed person who installed the LP-gas piping.

In §9.143(a), some NFPA 58 references are corrected. An option to allow a back check valve where the flow is into the container only or a back check valve in lieu of the ESV is added. The last sentence in subsection (a) before the wording for new paragraph (1) begins is deleted, along with the same sentence at the end of subsection (b) before the deleted wording in subsection (b)(1) begins, and this wording is added with some clarifications as new subsection (i). In subsection (a), new paragraphs (1) through (5) are added; however, for the most part, this wording is not new. It is currently found in subsection (b), but the more logical placement is under subsection (a). The only changes from the current paragraphs (1) through (5) are in paragraph (2), where the wording "and will activate the ESV at the bulkhead and the primary discharge valves at the container or containers" is added for clarification, and in paragraph (5), where the phrase "interconnected and" is added referring to pneumatically-operated internal valves and ESVs being interconnected and incorporated into at least one remote operating system. Also in subsection (a)(1), the 24-requirement is changed to 36 es to comply with NFPA 58. In subsection (b), the existing paragraphs (1) through (5) are deleted. In subsection (d)(4), wording is added to address underground or mounded containers, which are beginning to be used in Texas. In (d)(7)(C), wording changes mean that the top cross member of a vertical bulkhead is not required to be 28 es or less above ground level, but rather the height of it shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pull-away. In subsection (e), the distance for the remote emergency shutoff device that is currently between 20 and 100 feet from the ESV is changed, effective September 1, 2005, to a minimum of 25 feet to match the requirement in NFPA 58; existing installations may remain at 20 feet.

Some new wording in §9.201 addresses some potentially unsafe situations involving transports. New subsection (a)(1) states that the transfer of LP-gas from one transport to another shall be permitted only through a hose with a nominal inside diameter of 1 1/4 or less and protected by an off-truck remote control shutdown as required in 49 CFR. New subsection (a)(2) states that an LP-gas transport shall not be joined to manifold piping or to a stationary container for use as an auxiliary storage container at any stationary installation except with prior approval from the Safety Division. In subsection (c), an amendment corrects the wording of 49 CFR §177.834(j).

In §9.202, references to the License and Permit Section are added. In subsection (c)(5), new subparagraphs (B) and (C) are added to state that the Section shall not issue an LPG Form 4 if the Section does not have an inspection record of the transport or cylinder delivery unit by a Commission representative within four years of its initial registration on or after January 1, 2006, or the Section has not inspected the transport or cylinder delivery unit at least once within a four-year cycle thereafter. This new wording addresses a situation where the Commission may need to inspect the vehicles of a single company with a large number of vehicles; the wording will ensure that all of a company's vehicles are routinely inspected, without adding a harsher requirement that all vehicles must be present at a particular day and time.

New §9.204 mirrors proposed new §9.113, but is specific to maintenance of vehicles. The wording of the two rules is generally the same and requires that the LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas container, gas utilization equipment, and appliances be maintained in safe working order. If any of these items is not in safe working order, the Safety Division may require that the vehicle be immediately removed from LP-gas service until necessary repairs are made.

Amendments in §9.308(a), (b), and (b)(3) clarify that pressure testing and leakage testing must be performed only by persons properly licensed or certified by the Commission; the Commission modified the wording on adoption not to require tagging a system upon completion of leakage testing. Instead licensees are required to retain documentation of leakage testing, stated in a new subsection (d).

Most changes in §9.403 are in the Table, except for new subsection (c), which adds an explanation concerning the errata from NFPA. The changes in the Table are as follows: The current rows for 1.3 and 1.7.40 were proposed to be deleted. Because the Commission does not adopt the repeal of §9.114, the row for 1.3 is retained. The row for 1.7.40 is deleted as unnecessary because it refers to low emission transfer, which is covered in 3.11, which is not adopted. Several changes are proposed in the row for 2.3.3.2(b)(2). In the wording for "2a," the phrase "or a positive shutoff valve in combination with a back flow check valve" is added. Also, wording in "b" is added back to the Table; it was erroneously deleted during the last amendments to the Table. In the wording for "c," the word "Containers" is changed to "Each container" for clarification. Also in "c," the phrase "and retrofitted" is changed to "shall be retrofitted" to make the requirement clear. In "c1," the phrase "installed directly into the container" is added for clarity and to ensure that the valve is installed in the best place for optimum safety. In "c2," the phrase "as close as

practical" is deleted and the specific distance of "within four feet" added for clarity; the distance of four feet is reasonable because an ESV for a bulkhead is already required to be installed within four feet of the bulkhead. A new row for 3.2.2.2 is added to state that "Exception No. 1 and Exception No. 3" are not adopted. In the row for 3.2.5, for the firm foundation of concrete, masonry, or metal, the word "and" is added so that it must also be otherwise firmly secured "against displacement." In the row for 3.2.12.1, the words "on or" are added before the February 1, 2001, date in order to encompass the actual date of February 1. In the rows for 3.2.18.1, 3.2.18.2, and 3.2.18.3, the phrase "liquid or vapor service" is changed to "liquid and/or vapor service". In the rows for 3.4.2.1, 3.4.2.7, 3.4.4.1(b), and 3.4.9.2, some references to water capacity are corrected to "LP-gas capacity." A new row is added for 3.10.2.1 which refers to proposed new §9.35, relating to Written Procedures for LP-Gas Leaks. A new row is added to not adopt 3.10.2.2, which refers to the fire safety analysis, which the Commission determines is not needed because Commission rules already require redundant safety features. A new row is added to indicate that 3.11 is not adopted, and current rows for 3.11.3, 3.11.3.1, 3.11.3.3, 3.11.4.3(c), and 3.11.5 are deleted. In the row for 8.2.3(l), the section number is corrected to 8.2.3.1(l).

Finally, the six rules in Subchapter F are repealed. This subchapter adopted by reference NFPA 51 concerning welding activities. Subsequently, the Commission adopted by reference NFPA 58, which encompasses NFPA 51. Therefore, the separate subchapter for NFPA 51 is no longer needed.

The Commission received 43 comments on the proposals. One was from the Texas Propane Gas Association (TPGA), one was from the chairman of the Commission's LP-Gas Advisory Committee on behalf of the committee, and the remainder were from individuals. The comments addressed 16 of the proposed rules, but most were directed to only about nine of the proposals. Many contained the same general comments. TPGA opposed specific proposed amendments; the comments offered suggested changes to the Commission's proposed language. The chairman of the Commission's LP-Gas Advisory Committee filed comments on behalf of the committee, stating that the committee agreed that most of the proposed rules are necessary and/or beneficial with no adverse effect on the LP-gas industry or public. The Committee commented on six particular proposals. In the following paragraphs, the Commission addresses all comments by rule number in numerical order.

One comment from an individual asserted that the amended definition of "licensee" in §9.2(21) that adds master or journeyman plumbers and Class A and B heating/air conditioning licensees will create problems because, in the past, these types of licensees occasionally used unapproved piping materials; the commenter questioned if the Commission could enforce compliance with these additional activities. The Commission disagrees with this comment. Non-compliance with LP-gas safety rules is not limited to master and journeyman plumbers and Class A and B heating/air conditioning licensees. The Commission is confident that compliance can be adequately enforced at existing staffing levels.

The same commenter also stated that the definition of "MPS gas" is not needed because it is included in Texas Natural Resources Code, §113.002(4). The Commission disagrees with this comment. The cited statutory definition is for "liquefied petroleum gas," "LPG," or "LP-gas," which is defined to mean any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylene. "MPS gas (methylacetylene-propadiene, stabilized)" is defined as "a mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4)," and is essentially moved from §9.502(c)(2), which is being repealed.

Most comments about §9.2 concerned the proposed definitions of "operations supervisor" and "outlet" in paragraphs (30) and (31), respectively. One commenter asserted that the amendments would increase the number of outlets for his company from 28 to 50, and that most of these are unmanned storage tanks. The comment stated that requiring an individual to be assigned to each location will increase paperwork and costs to the customers. This commenter also disagreed with the definition of "operations supervisor," stating that the Commission should accept that a trained and qualified individual can supervise more than one location. Twenty-eight other individuals made similar comments. Another commenter stated that the definition of "operations supervisor" may be suitable for a small dealer with two or three employees and only one location, but not for a large company. Another commenter stated that this definition "would require remote and presently manned or unmanned storage sites to be attended by a Category E licensee," and would require "a supervisor to ride in the delivery or service truck." Another commenter, who operates 13 storage tank sites, stated that the definition of "outlet" would require employees at every location and would affect the company's centralized distribution system by causing higher costs to customers. Two comments, one from an individual and one from TPGA, stated that the proposal would add hundreds of installations, including unmanned storage sites, and suggested that the inspection procedure be changed so that an inspector would call a licensee about a week prior to an inspection. The LP-Gas Advisory Committee made similar comments regarding the number of outlets and costs to consumers being increased, and stated that a licensee would have to have a different Category E employee for each site, and in some cases, may have more locations than employees; the comment stated that the amendments to §9.17(a)(3) must be adopted with §9.2, with some clarifications (discussed in a later paragraph in this preamble). One individual stated that the rule language should remain as is and a Category E should be able to cover a certain mile radius. Another individual stated that changing the definition of "outlet" to include any place where regulated LP-gas activities are performed would place large responsibilities on licensees operating an outlet, and suggested that the specific LP-gas activities should also be defined.

The Commission agrees with the comments from TPGA and the LP-Gas Advisory Committee that the amendments in §9.2 and §9.17(a)(3) must be adopted together in order for the two rules to be complied with. The Commission disagrees with those comments opposing the proposed definitions for "outlet" and "operations supervisor" on the basis that an employee would have to be stationed at each outlet at all times or that the definitions would be suitable for a dealer with only one outlet. The amendments to the definitions do not require that a person physically be present at every LP-gas outlet, nor do they require a supervisor to ride in every delivery or service truck. The Commission agrees that the amendment to the definition of "outlet" expands its scope, so that more LP-gas locations would fall within it; however, the amended definition does not require that a licensee have either a supervisor or even an employee physically present at the site

at all times. The Commission disagrees that the amended definition for "operations supervisor" changes any existing requirement with respect to whether that individual is present at the locations he or she supervises, or that an "operations supervisor" could not supervise more than one location. The Commission disagrees that there is anything in the proposed definition of either term that changes the requirements with respect to supervision of day-to-day LP-gas activities. The amendment to the definition of "operations supervisor" simply adds as a condition the requirement that the individual be authorized to implement operational changes; the amended definition does not require the physical presence of the individual at any outlet or location. The Commission disagrees with comments suggesting that the Commission inspection procedures be changed to require an inspector to call a licensee about a week prior to inspection because it would unduly limit the ability of the inspectors to structure their work for maximum efficiency or to respond to the occasional emergency event. The Commission also disagrees that the definition of "outlet" should include a list of regulated LP-gas activities. Texas Natural Resources Code, §113.081, lists those LP-gas activities for which a license is required, as does 16 Texas Administrative Code §9.6; there is no reason to include yet another list of LP-gas activities in the rules.

The Commission adopts the definitions of "licensee," "MPS gas," "operations supervisor," and "outlet" in §9.2 as proposed.

Regarding the proposed amendments to §9.3, one commenter stated that LPG Form 17 should not be deleted because it was established to enforce Vernon's Civil Statutes, Article 6053.

The Commission responds to these comments by pointing out that in 1997, the 75th Legislature repealed Vernon's Civil Statutes, Article 6053-6066g, and enacted codified versions of these provisions in the Texas Utilities Code (Acts 1997, 75th Leg., ch. 166, §1, eff. Sept. 1, 1997). The portions of Article 6053 that applied to LP-gas are now found in Texas Utilities Code, §§121.251-121.253. Those statutory provisions are the legal basis for the Commission's rule §9.114, which was proposed to be repealed because the Safety Division no longer needs the odorization reports. The Commission did not propose the repeal of the requirement that LP-gas be odorized, which is still applicable pursuant to the Commission's adoption of the National Fire Protection Association's 2001 edition of the *Liquefied Petroleum Gas Code*, formerly titled *Standard for the Storage and Handling of Liquefied Petroleum Gases*, and commonly referred to as "NFPA 58" or "Pamphlet 58." In 16 Texas Administrative Code §9.403(a), the table shows that §9.114 imposes an additional requirement on Texas LP-gas licensees, *i.e.*, filing quarterly odorization reports with the Railroad Commission. Adoption of the amendment to §9.3 that would have deleted LPG Form 17 would not have changed the requirement for odorizing LP-gas. However, because the Commission audit staff does use the LPG Form 17 in its auditing work, the Commission is withdrawing the proposal to remove this form from the list of LP-gas forms in §9.3, and is not adopting the repeal of §9.114, as explained in subsequent paragraphs in this preamble.

Regarding the proposed amendments to §9.10, two commenters suggested that the Commission offer the management-level exam independently as well as in conjunction with classes, which would give people more options to take the exam. Eleven commenters made similar comments and added that the current process under §9.17(g) to allow a work experience substitution for Category E and I licenses should continue, with one of these commenters suggesting a minimum of five to 10 years of experience. Another commenter stated that if an individual holds a certification card, the individual should be able to upgrade to management level by taking the exam only; this commenter also suggested that the exams be given independently as well as with the classes. An individual stated that for "mom and pop" operators, requiring the 80-hour course prior to taking the exam would be a hardship, and another individual questioned why the Commission would want to make the certification process more difficult. One individual commented that it is almost impossible to obtain a Category E or I certification because it takes almost four months to complete and requires attending a class and taking the exam in Austin; the commenter stated that "it seems in the name of safety, the Railroad Commission (through over-regulating) is trying to strangle the propane industry." Another individual stated that a marketer could ask the Commission for permission to assign somebody temporary, such as a Category E from another outlet or a certified employee, to oversee the outlet until a replacement can attend the management-level course and take the test; this commenter agreed with the Commission's longstanding recommendation that a Category E licensee should have more than one Category E employee within the company. One individual questioned whether §9.10 and §9.17 conflict with regard to the conditional qualification in §9.17(g).

The Commission disagrees with the comment that there should be a prescribed minimum number of years of work experience to be able to substitute work experience under §9.17(g) because it would severely constrain the ability of the Commission to be flexible in certain circumstances. The Commission disagrees also with the comment that an individual should be able to upgrade to management level by taking the exam only; the course is an important opportunity to review or possibly to learn new information that is helpful in conducting LP-gas activities safely. The Commission further disagrees with the comment that requiring the 80-hour course prior to taking the exam would be a hardship for "mom and pop" operators, and the implied suggestion that "mom and pop" operators should be exempt from the course requirement. The safety with which LP-gas activities are conducted does not depend on whether the person conducting them is a "mom and pop" operator or any other type of operator. The training courses are an important component in ensuring that the health, safety, and welfare of the general public are not harmed because of LP-gas activities.

To ensure continuous safe operation, the Commission has consistently recommended that every licensed company employ more than one qualified manager; however, the rules do not require this. The Commission also recognizes that flexibility in administering certain management-level examinations may be achieved without compromising safety. Accordingly, the Commission adopts the amendments to §9.10(a)(2) with clarified wording. The change means that Category E, F, G, I, and J management-level rules examinations may be administered otherwise than in conjunction with the corresponding required management course, but only to a person who has submitted a written request and received approval for a conditional qualification in compliance with §9.17(g). As adopted, §9.10(a)(2) includes the phrase "Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g)" to the beginning of the paragraph. This change will allow the Commission to make exceptions in certain circumstances without compromising LP-gas safety.

Regarding the proposed amendments to §9.13, one commenter questioned how the Commission could perform inspections for general installers and repairmen when it does not have enough inspectors to cover yearly inspections for Category E licensees. The Commission disagrees with this comment. The Safety Division has adopted a risk-based inspection schedule; installations are periodically inspected according to their risk category. Further, the change to §9.13 does not require additional inspections by the Safety Division Staff because the amendment would accept these exempt entities within license Category D. The Commission adopts the amendment to §9.13 without change to the proposal.

Regarding the proposed amendments to §9.17(a)(3), two individuals made comments similar to those for §9.2 and asserted that a change in the definition of "operations supervisor" would require an employee to be stationed at every storage facility, increasing costs to consumers. Two commenters stated that §9.17(a)(3) would be advantageous for a small business with only two outlets, and asked that the definition of "outlet" be clarified to exclude bulk storage sites. Four comments expressed support for this amendment, stating that the proposal would allow the propane industry to operate more efficiently without compromising the health, safety, and welfare of the public. Two other commenters, one individual and TPGA, suggested the rule be changed to clarify that the intent of the Commission is only to designate a certified individual for each outlet, not to require that a certified individual be present at each outlet. Two commenters suggested that Commission inspectors call the licensee to have a representative meet at the storage site. Another individual stated that an outlet, under the current definition, should still be required to have a Category E licensee, but this should not include remote storage sites; the commenter also suggested that the Commission call ahead to schedule inspections. The LP-Gas Advisory Committee commented that the §9.17(a)(3) amendments must be required with the §9.2 amendments, with some clarifications to state that "a designated LP-gas certified employee may be responsible for more than one outlet." Four individuals stated that it is a good idea to allow the appointment of an LP-gas certified employee as the responsible contact person, but disagreed that a remote bulk plant should require this, and added that the Commission inspectors should call a company to set up an inspection time. Another individual stated that a Category E licensee should be able to cover various locations within a certain mile radius and a certified employee could be the responsible person, while another individual made almost the opposite comment, stating that the number of outlets a Category E can oversee would be different for different areas of the state. One commenter stated that the rule should not be adopted because of liability reasons and urged that the current rule be left in place as it requires one person identified by the licensee as the person in charge of LP-gas activities at an outlet, and that person would have taken the most extensive management exam administered by the Commission for that category of license. The commenter stated that the proposal would allow someone who has taken only an employee-level exam to supervise the outlet's activities. The commenter also stated that the proposed rule would allow one person to be in charge of 40 to 50 outlets and there is no way one person can be directly responsible for actively supervising that many outlets.

The Commission agrees that the amendments in §9.2 and §9.17(a)(3) must be adopted together in order for the two rules to be complied with. The Commission agrees that the amendment in §9.17(a)(3) would allow the propane industry to operate more efficiently without compromising the health, safety, and welfare of the public. The Commission also agrees that it would be helpful to clarify that the intent of the Commission is only to designate a certified individual for each outlet, not to require that a certified individual be present at each outlet. The Commission agrees that a Category E licensee should be able to cover various locations within a certain mile radius and a certified employee could be the responsible person; the Commission also agrees that the number of outlets a Category E can oversee could be different based on the type of LP-gas activities performed, the geographic scope of a licensee's operations, and other factors. The Commission agrees that the amendment would allow an individual to be the operations supervisor at more than one outlet, provided each outlet has a designated LP-gas certified employee who is responsible for the LP-gas activities conducted at or from that outlet. This still does not require that an LP-gas licensee have an employee on site at every outlet; that decision is up to the licensee. The rule does require that for every location at or from which LP-gas activities are conducted, there be a named, LP-gas certified individual who is responsible for those LP-gas activities.

The Commission disagrees with comments that an employee would have to be stationed at each outlet at all times or that these requirements would not be suitable for a remote storage site. The amendment requires that at every location at or from which a licensee performs regulated LP-gas activities, whether that location is staffed or not staffed, there be an LP-gas certified individual identified as the person in charge of the LP-gas activities at that location. The Commission disagrees with comments suggesting that the Commission inspection procedures be changed to require an inspector to call a licensee to schedule an inspection because that would unduly limit the ability of the inspectors to structure their work for maximum efficiency or to respond to the occasional emergency event. The Commission disagrees that the rule should not be adopted because of liability reasons; the Commission does not determine liability, and is charged only, but significantly, with adopting and enforcing rules that protect or tend to protect the health, safety, and welfare of the general public, with respect to LP-gas activities. The Commission neither agrees nor disagrees with the comment that there is "no way the rule would allow one person to be in charge of 40 to 50 outlets and there is no way one person can be directly responsible for actively supervising that many outlets." The rule would permit an operations supervisor to be responsible for more than one location, but there is no limit on how many locations that might be and, as previously noted, the number of locations that one operations supervisor can effectively supervise will vary depending on a number of factors.

The Commission adopts the amendments to §9.17(a)(3), with clarifying changes to the proposed wording. Because the intent of the rule is to enhance safety, the Commission adopts §9.17(a)(3) with an additional change. The additional wording requires that, at each outlet, licensees post a sign displaying the 24-hour emergency response telephone number. This will ensure that, with respect to every location at or from which an LP-gas licensee conducts LP-gas activities, there will be an emergency response telephone number that Commission inspectors, emergency responders, and customers may call when necessary.

To clarify §9.17(g) in conjunction with changes adopted in §9.10(a)(2) discussed previously, the Commission adopts two changes in §9.17(g), indicated by the italics in the following text. The subsection now begins: "Work experience substitution for

Category E, F, G, I, and J. The assistant director for the Section may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I, or J *management-level* training course, or *a subsequent Category E, F, G, I, or J management-level training course* agreed on by the assistant director and the applicant." The Commission adopts the remainder of subsection (g) as proposed.

Regarding the proposed repeal of §9.33, one commenter stated that if the LP-gas welding advisory committee is going to be repealed, the LP-gas advisory committee (established by §9.32, which was not included in the proposal) should be repealed as well because its membership does not represent the LP-gas industry or comply with §9.32.

As noted in the proposal preamble, the Commission proposed the repeal of §9.33, relating to the welding advisory committee, because the limited purpose for that committee had already been fulfilled and the committee disbanded; therefore, the rule is no longer necessary. Even were the Commission inclined to do so (and it is not), the Commission could not adopt the repeal of a rule that was not proposed to be repealed. The Commission adopts the repeal of §9.33 as proposed.

Regarding the proposed amendments to §9.35, three commenters commented that each company in the LP-gas business should have a written policy for handling leaks on customers' premises, as well as a procedure for handling leaks at their own storage facilities, and every employee of the company should know the procedure. The commenter asked for more detail on what would be required for such a procedure. Twenty other individuals and TPGA stated that if each company writes its own procedures, there would be many different versions; these commenters requested that the Commission give specific wording for the procedures to provide consistency statewide. Another commenter stated that a written procedure is a good idea, but not necessary; the proposal would make each company legally responsible to do something about a reported gas leak, but if the propane company has never sold gas to that customer before, the company would have no background information on that customer's system and the best response would be to tell the customer to call the fire department. The LP-Gas Advisory Committee also requested that the rule include a minimum standard for the written procedures; otherwise, it could be possible that a licensee might give instructions that could make a reported LP-gas leak less safe, such as telling a customer smelling gas not to worry because the tank is probably "just getting low." The Committee also noted that licensees are required by federal law to have emergency response plans for their locations. One individual asked whether the written procedures would apply both to leaks at storage facilities and leaks at customers' locations, and stated that the reference to NFPA 58, 3.10.2.1, refers to major storage installations of over 4,000 gallons, which would seem not to include residential installations.

The Commission adopts this new rule to address documented situations, such as the one in which a safety problem (a leak at a licensee's storage location) was occurring, and when the licensee was notified by the local fire department requesting assistance, the licensee said no employees would be available until after the weekend. By adopting this rule, the Commission is making all licensees aware of and responsible for developing and maintaining their own written safety procedures so that a licensee's employees will be informed of what to do in an emergency. The Commission intentionally declines to list or describe the minimum requirements of such a plan; the Commission intentionally leaves the specific elements of the written plan to the individual licensees, who best know their own customers and geographic areas. Licensees may consult with industry associations, local emergency responders, liability underwriters, or may refer to technical publications. The point of this rule is precisely not to have a "one size fits all" mandate for emergency response, but rather to ensure that every licensee has a written plan that its employees understand and can implement immediately if necessary. The Commission adopts §9.35 as proposed.

Regarding the proposed amendments to §9.101, one commenter suggested that the word "incomplete" be added to describe a Form 501 that has to be resubmitted, so that the rule would read, "A nonrefundable $20 fee shall be required for an incomplete Form 501." The Commission disagrees with this comment and does not adopt the suggested change. The Commission finds that there could be several reasons for a Form 501 to be resubmitted, not just the fact that it might be incomplete. The Commission adopts §9.101 as proposed.

With respect to the proposed repeal of §9.114, one commenter stated that this rule should be retained because of Vernon's Civil Statutes, Article 6053. For the same reasons set forth previously with respect to the comments offered regarding the proposed amendments to §9.3, the Commission disagrees with this comment. However, the Commission withdraws its proposal to repeal §9.114 because the Commission's audit staff uses LPG Form 17 in its audit work.

Regarding the proposed amendments to §9.132, four individuals objected to the proposal because deliveries are frequently made to licensees at times when they are closed, making it difficult to verify that they have a valid license, and suggested that the Commission would have to have someone available at all times to answer phone calls from the LP-gas industry to check on valid licenses. Another commenter stated that her company should not have to "baby-sit" another company, while eight other commenters said it is the responsibility of the individual licensee to ensure that the license is current and it should not be one company's duty to make other companies follow the rules. One commenter asked if the amendment would require each licensee to have a person available to produce the current license when the transport company makes a delivery, while others said licensees would be limited as to the hours they could deliver to resellers. Three commenters stated that the rule would make LP-gas marketers responsible for enforcement of Commission rules on other marketers, that the Commission should enforce its current rules regarding unlicensed companies, and that marketers have no way to know if a license is in good standing. Another commenter said his company checks yearly to make sure its dealers are current, but suggested the Commission should alert the marketers in a general area when a dealer has lost his license, while another similar comment stated that the Commission should require each reseller licensee to list the gas suppliers used and then the Commission could notify the suppliers when there is a lapse in the license. One commenter said his company sells only to one licensed individual known to and trusted by the commenter, but that checking to see if a license is in compliance would be onerous. Five commenters said the marketer cannot be sure if a license is valid at the moment of delivery, the drivers would have to contact the Commission at every stop, the marketer has no power over an unlicensed individual other

than not delivering the gas, the Commission should ensure that licenses are current, and the proposed amendment is not backed by statute. Two commenters, an individual and TPGA, asserted that the sale of LP-gas to an individual for resale does not pose a safety problem, but does when the unlicensed entity sells the product to others; the commenters cited ultimate consumers as an example of this situation, and also made comments similar to those summarized previously regarding the necessity for a Commission 24-hour phone number for licenses to be checked. The commenters also alleged that the proposal was made because the Commission is having problems stopping the sale of LP-gas by unlicensed entities and suggested that if the Commission stiffened penalties for these violations, they would stop. Finally, the commenters cited a situation such as when church members install an LP-gas container for a church; because they are not engaged in the business of installing containers, a license is not required. The commenters stated this rule conflicts with the Natural Resources Code. An individual commented that it is impossible for a delivery driver to check a current license because the driver's contact is usually with a desk clerk who knows nothing about the license; the commenter also stated that when he has called the Commission's Licensing Section in the past, he has been required to leave voice mail and did not receive a response for several days. Another individual also cited instances of having to leave voice mail when calling the Licensing Section and said that a driver having to wait for a return call would reduce the number of deliveries he can make, and suggested if the rule is adopted, the Commission should have a 24-hour number available. The LP-Gas Advisory Committee commented that at the time of an initial sale to an individual for resale, a requirement to confirm that the individual does have a current license would be reasonable; however, a license can be revoked for a variety of reasons and displaying a license would not necessarily be satisfactory proof. The Committee also stated that having to verify the license status for future deliveries would be difficult because deliveries are made at times when the Commission is closed. If the rule required the Commission to notify licensees when a license is revoked, then the burden of enforcement would remain with the Commission, not the licensee. An individual stated that the Commission should issue a "delivery certificate" per site to all licensed dealers and the driver should check the certificate before he makes a delivery. Another individual agreed with the proposal, but said the Commission would need to publish a list of licensed individuals for dealers to check, while another individual stated that a 24-hour phone number would not be cost feasible for the Commission.

The Commission agrees with comments that there are times when the Licensing Section is not open and it is not possible to immediately obtain the current status of an LP-gas license; however, the Commission has remedied some of the delay in responding to messages that are left. The Commission also agrees that LP-gas deliveries are made at times when the customer is closed, making it impossible for a delivery person to ask the customer for its license; and that merely displaying an LP-gas license does not ensure that it is currently in good standing. The Commission disagrees that it should have someone available at all times to check license validity, and agrees that having a 24-hour phone number answered by a Commission employee would not be cost-effective for the agency. The Commission disagrees with the suggestions that the Commission should notify suppliers in a general area that an LP-gas license has been revoked or is no longer in good standing or that the Commission should issue a "delivery certificate" per site to all licensed dealers so that delivery drivers can check the certificate before making a delivery; again, such a procedure would not be cost-effective for the Commission. Even if the Commission were to publish a list of licensed individuals for dealers to check, there would always be some gap between the time a license event occurs (*e.g.*, revocation) and the time the list is updated.

The Commission agrees that there is no procedure for checking the standing of a customer's license to engage in the sale of LP-gas that will be one hundred percent foolproof in determining the validity of that license. The Commission agrees that some methods for checking license status might be onerous, but the rule does not require that licensees use a particular method for determining whether a purchaser for resale is licensed. However, that does not mean that a licensee cannot make good-faith efforts and take reasonable, common-sense steps to ensure that a person who buys LP-gas for resale is licensed to do so. For example, at the time such an account is established, the licensee can ask to see a current license and can confirm with the Commission the standing of that license.

The Commission disagrees with comments that the Commission is requiring LP-gas licensees to enforce the Commission rules with respect to other entities. The Commission agrees that a marketer has no power over an unlicensed individual other than not delivering the gas; that is the exact reason the Commission adopts the amendments to §9.132. The Commission disagrees with the comment that the sale of LP-gas to an individual for resale does not pose a safety problem. If a seller knows that a buyer intends to resell the LP-gas and also knows or has a good reason to suspect that the buyer is not licensed to resell the LP-gas, then the seller has not acted in good faith to protect the health, safety, and welfare of the general public because the seller has put LP-gas in the hands of an unlicensed person. The quantity of LP-gas sold for resale could pose a safety problem in the hands of an unlicensed person even if it is never resold.

The Commission agrees that one reason for the proposed amendment is the difficulty of stopping the sale of LP-gas by unlicensed entities. The Commission also agrees that imposing stiffer penalties for such violations may indeed reduce the activity; in addition, the Commission expects that imposing on licensees a reasonable requirement not to sell LP-gas for resale to unlicensed individuals may be successful in reducing the supply of LP-gas for unlicensed individuals to resell.

The Commission disagrees that the amendment is not backed by statute: Texas Natural Resources Code, §113.051, requires the Commission to promulgate and adopt rules or standards or both relating to any and all aspects or phases of the LPG industry that will protect or tend to protect the health, welfare, and safety of the general public. Texas Natural Resources Code, §113.081(a)(4), provides that unless a person has obtained a license from the Commission authorizing the activity, no person may engage in the sale, transportation, dispensation, or storage of liquefied petroleum gas in this state, except that no license is required to sell LPG where the vendor never obtains possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

Finally, the Commission notes that the wording in §9.132 prohibiting sale of LP-gas containers to unlicensed individuals for resale has been in place for many years. The amendment to this rule merely adds to this existing prohibition the sale for resale of LP-gas. The Commission finds this additional prohibition to be reasonable and fully supported by statutory authority, as cited previously. The Commission adopts §9.132 as proposed.

Regarding the proposed amendments to §9.134, one commenter stated that if piping is in violation, he would not connect a tank to it, even though the rule appears to state that this is allowed as long as a Form 22 is sent to the Commission. Another commenter said the rule contradicts the Form 22, which is to report a violation; the commenter asked why would he connect to an installation in violation of the rule and then report himself.

The Commission disagrees that the amendments to §9.134 permit connection to piping that is in violation of the rule; the wording of the rule specifically states that a licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22. The Commission disagrees that the violation being reported on LPG Form 22 is that of the connecting licensee. The LPG Form 22 reports the initial violation, which is the installation of piping by an unlicensed person, an act that is already prohibited by the current wording of the rule. The amendment is intended to prevent collusion between a licensee and a person along the lines of "you (unlicensed individual) do the work and I (LP-gas licensee) will tag it," and to prevent LP-gas activities by persons who should be licensed but are not. The Commission assumes that no LP-gas licensee would knowingly connect a tank to any system that the licensee has not tested to ensure that it is safe. The Commission adopts §9.134 as proposed.

Concerning §9.140, four commenters stated that the proposed amendment to subsection (h)(3)(E) to increase the distance between a portable cylinder exchange rack and a wheelstop from 48 es to 60 es is not justified; 48 es is ample to protect these racks from parked vehicles; and the new distance would require retail outlets to give up additional parking area. Another commenter stated that the reference to NFPA 58, 5.4.2.2, found in §9.140(h) should be deleted because the Commission has not adopted 5.4.2.2; in addition, this commenter stated that the rule should be reworded so that there is an option to comply with subsection (h)(3)(C) or (E) because the commenter does not know of any six- concrete wheelstops available on the market.

The Commission agrees with these comments and adopts §9.140 with several clarifying changes. In subsection (h)(3)(C) and (E), the Commission both keeps the existing wording and adopts the new wording, thus enabling licensees to have the option of using a four- wheelstop with a 60- distance or a six-wheelstop with the 48- distance. This change will ensure safety while accommodating locations that may have limited parking space. With regard to the comment concerning the reference to NFPA 58, 5.4.2.2, the Commission agrees that this section was not adopted, so the wording at the beginning of subsection (h) has been modified slightly for clarification.

Regarding the proposed amendments to §9.143(e), one commenter stated that the rule should be clarified that all installations built before September 1, 2005, can retain the 20 to 100 feet distance, and all installations after September 1, 2005, must have the 25 to 100 foot distance.

The Commission agrees with this comment; this was the Commission's intention with the proposed wording. The Commission adopts the rule with one clarifying change to indicate that all "new" installations, *i.e.*, those installed on or after September 1, 2005, must comply with the 25 to 100 foot distance.

With respect to the proposed amendments to §9.202, one commenter stated that Commission inspectors frequently show up unannounced and demand to inspect all vehicles. Many times the vehicles have to be called in from deliveries to be inspected. The commenter requested a one-day advance notice of an inspection so that all trucks could be available, and pointed out that the United States Department of Transportation already requires annual inspections on delivery vehicles, and there is no exception for situations in which a truck is available but the inspector is not. In that case, according to the commenter, he would not be able to use the truck because the Commission could not meet its own self-imposed deadline. The comment concluded that the rule may require the Commission to hire more employees to complete the inspections. Ten individuals and TPGA also requested advance notice of a Commission inspection and questioned whether the Commission could meet its deadline of inspecting all trucks every four years. Another commenter cited DOT, hydro, and other inspections and tests done on bobtails, and suggested that these could substitute for Commission inspections. Four comments also cited inspections performed by DOT; stated that licensees pay a fee to the Commission for each propane delivery vehicle so no additional income would be generated for the Commission from the duplicate inspections; and more Commission inspectors would have to be hired. Two individuals did not object to the Commission inspections, but questioned if the current inspection staff could meet the rule requirements. Four individuals stated that if a licensee made a truck available for inspection, the Commission must either inspect it or register it, and one of these commenters added that the Commission may need more inspectors. Another commenter also cited the multiple other inspections and also suggested that the Commission call ahead to schedule inspections and verify which trucks need to be inspected within a four-year time frame. The LP-Gas Advisory Committee commented that the inspection of each registered transport or cylinder delivery unit by the Commission periodically is an important requirement to ensure compliance with the safety rules; however, the Committee suggested that the rule also include language that if the Commission cannot inspect a vehicle within the four-year period, the vehicle may continue to be registered and operated until the Commission inspects it. An individual stated that his company's trucks are inspected by the Commission about once a year, but noted this may not occur in other parts of the state; the commenter said the Commission should notify licensees ahead of time and suggested that inspections be performed during the off-season (May through August). Another individual understood that it was the Commission's responsibility to inspect trucks whenever necessary, so the inspector should decide when to inspect and notify the licensee in advance to have the trucks available. Two individuals stated that the Commission should inspect every truck once every year. Another individual stated the proposal does not indicate how the inspections will be scheduled or conducted. Another individual asked if the DOT inspections already required once a year would make the Commission inspection redundant, and asserted that the Commission inspectors have many stationary installations to inspect that would take time away from truck inspections.

The Commission agrees that the inspection of each registered transport or cylinder delivery unit by the Commission periodically is an important requirement to ensure compliance with the safety rules. The Commission disagrees with all comments suggesting that this rule include a requirement of advance notice or scheduling of vehicle inspections. The Commission is not opposed to giving advance notice or scheduling vehicle inspections, but the

Safety Division already has a schedule for its staff work. This allows an individual inspector to give advance notice of or to schedule vehicle inspections if that inspector wishes to do so. The Commission disagrees that if a licensee makes a vehicle available for inspection, the Commission must either inspect it or register it; this would unduly hamper the inspectors' ability to prioritize their work. The Commission also disagrees that every vehicle should be inspected every year.

The Commission also disagrees with comments that the Commission should hire more employees to meet its deadline of inspecting all vehicles every four years; the Commission is confident that it can meet these goals with current staffing. The Commission disagrees that inspections and tests done by or for other agencies can substitute for the Commission inspection; other entities are not inspecting for compliance with Railroad Commission requirements.

Finally, the Commission disagrees that if it fails to inspect every vehicle by the fourth year, the licensee should be allowed to continue to operate the vehicle. It is the obligation of licensees to ensure their own compliance with Commission rules; if a vehicle has not been inspected as the fourth anniversary of the initial registration nears, the licensee could contact the Commission to ensure that the licensee's vehicles are on the master list for inspection, or could offer to make its vehicles available on a date certain; the inspector would have the discretion to accept such an offer. The Commission adopts the amendments to §9.202 without changes to the proposal.

Regarding the proposed amendments to §9.211, one commenter stated that requiring the name of the licensee on the rear side of the truck should be deleted because it serves no purpose and confuses fire personnel and first responders. The commenter stated the name of the licensee is already on both sides of the vessel. The Commission disagrees with this comment and declines to adopt the suggestion made by the commenter. This requirement has been in place for many years, and the Commission is not aware of widespread confusion. Further, the only proposed change in §9.211 was to change the reference to "the Commission" to the "Safety Division." The Commission adopts this rule without change from the proposal.

Regarding the proposed amendments to §9.308, one commenter did not see the safety or economic reason for the rule because many customers own their own tanks and try to save money by doing their own piping and repairs on their propane systems. The rule does not require them to place a tag with their name on it after they have gone into their home and added or replaced piping. The commenter stated that the last time he serviced the system and placed his tag on it, everything could have been in order, but he would be blamed for changes made by someone else. The commenter also stated that many customers run out of gas on a repeated basis and asked if he would be required to tag all these systems. He also requested that the Commission spell out exactly what piping and leakage tests should be done, at what pressure, and how long that pressure should be held. Six commenters stated that there are hundreds of customer-owned tanks, and those customers can buy gas from anyone; some customers may call a dealer who would fill a tank without doing the proper testing even though there is another dealer's tag on the tank. Six commenters made the same statements and added that their company keeps records of all testing performed, which the Commission could request in the event of an incident. Another commenter stated that the Commission's rule should be eliminated and NFPA 54, Part 3, used without change. Yet another commenter stated that his company exceeds the Commission's rules and if other companies did the same, the rule would not be necessary. Another individual stated that NFPA 54 requires a leak test upon an interruption of service and the Commission should require written records of leak tests because the tagging of a system after a leak test does not enhance safety. Thirteen individuals and TPGA stated that the amendment would expose a licensee to litigation in an accident investigation where the licensee may not have been the last company to fill or service the container, and that it is the testing, not the tag itself, that makes the container safe. Another individual stated that the rule does not address the real concern of performing a leak or pressure test, which would be difficult for the Commission to enforce because it does not require written proof of such a test; this commenter also said that most insurance companies require marketers to keep system test records, which the Commission could inspect. The LP-Gas Advisory Committee commented that the rule has included pressure testing, but never leakage testing, as required for an out-of-gas or GAS check situation. Requiring a tag after a leak check could be disastrous for a licensee because the tags do not enhance safety; the tags may remain in place after other licensees have serviced the installation. The comment stated that the Commission should not include leak testing and should continue its current interpretation of the rule. An individual stated that the rule should remain as is and that the Commission should enforce the requirement to perform a leak check if service has been interrupted. Another individual viewed the amendments as clarification of previously implied rules regarding "testing," but asked what wording the tag itself should include to indicate the type of activities performed. Another individual stated that some dealers do not tag an installation as is currently required and suggested that the Commission adopt the State of Oklahoma's leak test form.

The Commission agrees that many LP-gas customers own their own tanks and try to save money by doing their own piping and repairs on their propane systems, and that the rule does not require them to place a tag with their name on it after they have gone into their home and added or replaced piping. The Commission points out, however, that the statute does not give the Commission authority over customers. The Commission agrees that, as the rule was originally proposed, for every customer that runs out of gas on a repeated basis, the licensee would be required to tag all these systems, if the licensee performed a leakage test on the customer's system every time the customer was out of gas. The Commission agrees that there are hundreds of customer-owned tanks; that those customers can buy gas from anyone; and that some customers may call a dealer who would fill a tank without doing the proper testing even though there is another dealer's tag on the tank. The Commission agrees that keeping records of all testing performed, which the Commission could request in the event of an incident, is a good idea. The Commission agrees that if all companies exceeded the Commission's rule, the rule would not be necessary; the Commission's rules are the minimum safety standards. The Commission agrees that tagging of a system after performing a leak test does not enhance safety; the Commission also agrees that keeping written records of leak tests is a better practice. The Commission agrees that this rule does not address the real concern of performing a leak or pressure test, because this rule pertains to tagging, not testing. The Commission agrees that this rule should not include tagging after performing a leakage test provided written documentation is retained and has amended the

rule language to include a requirement for retaining documentation of leakage tests rather than tagging of the system. The Commission agrees that a tag should include the type of activities performed on a system; those requirements are already included in the rule in subsection (b). The Commission agrees that there are likely some dealers who do not tag an installation as is currently required.

The Commission neither agrees nor disagrees that a licensee would be blamed for changes made by someone else after he place his tag on a system; "blame" is a liability issue that is not within the scope of the Commission's authority. The Commission neither agrees nor disagrees that the amendment would expose a licensee to litigation in an accident investigation where the licensee may not have been the last company to fill or service the container, but agrees that it is the testing, not the tag itself, that makes the container safe.

The Commission disagrees that this rule should spell out exactly what piping and leakage tests should be done, at what pressure, and how long that pressure should be held, because this rule concerns the placement of a tag, not testing requirements that are already specified in NFPA 54. The Commission disagrees that the rule should be eliminated and NFPA 54, Part 3, used without change. The Commission disagrees with the suggestion to adopt the State of Oklahoma's leak test form, because this rule pertains to tagging, not testing.

The Commission points out that subsection (a) of this rule currently requires that certain LP-gas activities must be handled by licensed or certified persons; among these activities is testing. The proposed amendment would have specified that "testing" includes both pressure testing and leakage testing. This subsection is adopted as proposed.

Subsection (b) of this rule lists the activities that require the placement of a tag, but does not prescribe the kind of test that should be performed on a system. The rule currently requires that a tag should be placed on a system after completion of "testing." As proposed, the amendments would have clarified that both pressure tests and leakage tests should be followed by the placement of a tag. The Commission agrees that tagging in and of itself does not enhance or ensure safety, and that it is preferable for licensees to retain a record of pressure testing and leakage testing on LP-gas systems because the Commission could review those records if necessary. Pressure testing of a newly installed system or a modified system should be followed by placement of a tag; however, because the Commission agrees that performing a leakage test should not require the placement of a tag on a system, the wording has been clarified. In addition, the Commission agrees that licensees should retain documentation of all leakage and pressure testing, and subsection (b) has been modified to include this requirement in a new subsection (d).

One commenter also made some general comments that did not concern any particular rules. This comment stated that most of the rule changes place more responsibility on the licensees and less on the Commission; that the Texas Natural Resources Code, Chapter 113, requires the Commission to have sufficient employees to enforce that chapter; that the LP-gas industry fees exceed the LP-gas activity expenditures; and that all LP-gas funds collected need to be spent on the enforcement of LP-gas activities for safety reasons.

The Commission agrees that the rule changes place more responsibility on licensees than on the Railroad Commission; this is intentional. Every regulatory scheme that succeeds does so because most of the persons performing the regulated activity voluntarily comply with the regulations. The State of Texas is fortunate to have so many LP-gas licensees who take their safety responsibilities seriously and who are careful stewards of the trust placed in them by their customers.

The Commission also agrees that Texas Natural Resources Code, §113.014, directs that "sufficient employees shall be provided for the enforcement of this chapter." The Commission also agrees that it is likely that the LP-gas industry fees exceed the LP-gas activity expenditures, but points out that the Commission has no authority to expend more for LP-gas regulatory enforcement than the Legislature appropriates for each biennium. The Commission neither agrees nor disagrees with the comment that all LP-gas funds collected need to be spent on the enforcement of LP-gas activities for safety reasons, because it is the Legislature, through its appropriations process, that decides how much money the Commission may expend on LP-gas safety regulation.

The Commission received no comments regarding any of the other proposed amendments, new rules, or repeals.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.1 - 9.3, 9.6 - 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.35 - 9.38, 9.41, 9.51, 9.52 9.54

The Commission adopts the amendments and new rule pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

§9.3. LP-Gas Report Forms.

Under the provision of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following forms.

(1) LPG Form 1. Application for License.

(2) LPG Form lA. Branch Outlet List.

(3) LPG Form 3. Liquefied Petroleum Gas License.

(4) LPG Form 4. Liquefied Petroleum Gas Vehicle Identification.

(5) LPG Form 5. Manufacturer's Data Report.

(6) LPG Form 7. Liquefied Petroleum Gas Truck Registration.

(7) LPG Form 8. Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing.

(8) LPG Form 8A. Report of DOT Cylinder Repair.

(9) LPG Form 16. Application for Examination.

(10) LPG Form 16A. Certified Employee Transfer Certification.

(11) LPG Form 16B. Application for Examination Exemption by a Master Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor.

(12) LPG Form 16R. Reciprocity Examination Exemption.

(13) LPG Form 17. Report of Odorization of Liquefied Petroleum Gases.

(14) LPG Form 18. Statement of Lost or Destroyed License.

(15) LPG Form 18B. Statement of Lost or Destroyed LPG Form 4.

(16) LPG Form 19. Inventory of LP-Gas Storage Facility.

(17) LPG Form 20. Report of LP-Gas Incident/Accident.

(18) LPG Form 21. Notice of Intent to Appear.

(19) LPG Form 22. Report of LP-Gas Safety Rule Violations.

(20) LPG Form 23. Statement in Lieu of Container Testing.

(21) LPG Form 25. Application and Notice of Exception to the LP-Gas Safety Rules.

(22) LPG Form 26. Franchise Tax Certification.

(23) LPG Form 28. Notice of Election to Self-Insure Per Rule 9.26.

(24) LPG Form 28A. Bank Declarations Regarding Irrevocable Letter of Credit.

(25) LPG Form 500. Application for Installation.

(26) LPG Form 500A. Notice of Proposed LP-Gas Installation.

(27) LPG Form 501. Completion Report for Commercial Installations of Less than 10,000 Gallons Aggregate Water Capacity.

(28) LPG Form 502. Request for Commission Identification Nameplate.

(29) LPG Form 503. Request for Inspection of an LP-Gas System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicles.

(30) LPG Form 505. Testing Procedures Certification for Category B and O Licenses.

(31) LPG Form 506. Polyethylene Pipe/Tubing Heat-Fusion Certification.

(32) LPG Form 995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.

(33) LPG Form 996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance.

(34) LPG Form 996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance.

(35) LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.

(36) LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.

(37) LPG 998A. Certificate of Insurance, General Liability.

(38) LPG 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance.

(39) LPG Form 999. Notice of Insurance Cancellation.

§9.7. Application for License and License Renewal Requirements.

(a) No person shall perform work or be employed in any capacity requiring contact with LP-gas until that individual has taken and passed any applicable rules examination specified in §9.10 of this title (relating to Rules Examination) and in §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors, and, except for a trainee described in §9.12 of this title (relating to Trainees), has successfully completed the training requirements beginning in §9.51 of this title (relating to General Requirements for Training and Continuing Education). Licensees, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and examination identification cards for employees at that location available for inspection during regular business hours.

(b) Licensees shall maintain a current version of the LP-Gas Safety Rules and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours.

(c) Licenses issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(d) An applicant for a new license shall file with the License and Permit Section of the Gas Services Division (the Section):

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and, for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), including a 24-hour emergency response telephone number. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office with the Section; and

(2) LPG Form 16 or 16B and any of the following applicable forms:

(A) LPG Form 1A if the applicant will establish any outlets;

(B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another owner or name;

(D) LPG Form 26 if the applicant for license is a corporation or limited liability company; and the applicant shall also comply with §9.21 of this title (relating to Franchise Tax Certification and Assumed Name Certificates);

(E) LPG Form 996A or 996B if the applicant is required to carry workers' compensation; and the applicant shall also comply with §9.26 of this title (relating to Insurance Requirements);

(F) LPG Form 997A or 997B if the applicant will operate a transport or container delivery unit; and the applicant shall also comply with §9.26; and/or

(G) LPG Form 998A or 998B if the applicant is required to carry general liability; and the applicant shall also comply with §9.26;

(3) pay the following fees:

(A) the applicable license fee specified in §9.6 of this title (relating to Licenses and Fees);

(B) transport registration fees specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units), if the applicant for license intends to operate a transport or container delivery unit; and

(C) the nonrefundable management-level rules examination fee specified in §9.10 of this title (relating to Rules Examination); and

(D) the nonrefundable fee for any required training course as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(e) An applicant for license shall not engage in LP-gas activities governed by the Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, until it has employed a company representative and/or operations supervisor who has passed the management-level rules examination specified in §9.10 of this title (relating to Rules Examination) with a score of at least 75% and who has completed any required training in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses), or who has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption). Company representatives and operations supervisors shall also comply with §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors).

(f) For license renewals, the Section shall notify the licensee in writing at the address on file with the Section of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire. The renewal notice shall include copies of LPG Forms 1, 1A, 7, and 26, whichever are applicable, showing the information currently on file. Renewals shall be submitted to the Section with any necessary changes clearly marked on the forms. Licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), shall include on LPG Form 1 a 24-hour emergency response telephone number, if not previously submitted, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required by §9.6 of this title (relating to Licenses and Fees). Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title. Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas related activities.

(3) If a person's license has been expired for one year or more, that person shall not renew, but shall comply with the requirements for issuance of an original license.

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to the Section a fee that is equal to two times the renewal fee required by §9.6 of this title.

(A) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(B) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title (relating to Insurance Requirements) and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(g) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category A license or renewal shall file with the Section for each of its outlets legible copies of:

(A) its current Department of Transportation (DOT) authorization. A licensee shall not continue to operate after the expiration date of the DOT authorization; and/or

(B) its current American Society of Mechanical Engineers (ASME) Code, Section VIII certificate of authorization.

(2) An applicant for a Category B or O license or renewal shall file with the Section a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign the LPG Form 505.

(3) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with the Section a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§9.10. Rules Examination.

(a) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center.

(1) Dates and locations of available Commission LP-gas examinations may be obtained in the Austin offices of AFRED and on the Commission's web site at www.rrc.state.tx.us, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion.

(2) Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I, and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

(3) The Commission may not issue a certification card to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(4) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.

(5) Exam fees.

(A) The nonrefundable management-level rules examination fee (for company representatives and operations supervisors) is $50.

(B) The nonrefundable employee-level rules examination fee (for employees other than company representatives or operations supervisors) is $20.

(C) The nonrefundable examination fee shall be paid each time an individual wishes to take the examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J training course as specified in §9.51(f)(2)(A) of this title (relating to General Requirements for Training and Continuing Education) shall pay the charge specified for the applicable examination.

(b) Table 1 of this subsection specifies the examinations offered by the Commission.
Figure: 16 TAC §9.10(b)

(c) Within 15 calendar days of the date an individual takes an examination, AFRED shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing service, AFRED shall notify the individual of the examination results within 14 days of the date AFRED receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED shall notify the individual of the reason for the delay before the 90th day. AFRED may require a testing service to notify an individual of the individual's examination results.

(2) Successful completion of any required examination shall be credited to and accrue to the individual.

(3) An individual who has been issued a certification card shall make the card readily available and shall present the card to any Commission employee or agent who requests proof of certification.

(d) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed. If requested by an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination.

(1) Any individual who fails an examination administered by the Commission only at the Austin location may retake the same examination only one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the assistant director for the AFRED Research and Technical Services Section or the assistant director's designee.

§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file LPG Form 1 with the License and Permit Section of the Gas Services Division (the Section) designating the company representative for the license and/or LPG Form 1A designating the operations supervisor for each outlet.

(2) A licensee may have more than one company representative.

(3) An individual may be operations supervisor at more than one outlet provided that each outlet has a designated LP-gas certified employee who is responsible for the LP-gas activities at that outlet and that a sign, visible and legible at all times, with 24-hour emergency response telephone number be posted at that outlet.

(4) The company representative may also serve as operations supervisor for one of the licensee's outlets provided that the individual meets both the company representative and the operations supervisor requirements in this section.

(5) A licensee shall immediately notify the Section in writing upon termination, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement by submitting a new LPG Form 1 for a new company representative or a new LPG Form 1A for a new operations supervisor.

(A) A licensee shall cease all LP-gas activities if, at the termination of its company representative, there is no other qualified company representative of the licensee who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted an extension of time in which to comply as specified in subsection (g) of this section.

(B) A licensee shall cease LP-gas activities at an outlet if, at the termination of its operations supervisor for that outlet, there is no other qualified operations supervisor at that outlet who has complied with the Commission's requirements. A licensee shall not resume

LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted an extension of time in which to comply as specified in subsection (g) of this section.

(b) Company representative. A company representative shall comply with the following requirements:

(1) be an owner or employee of the licensed entity, in the case of a licensee other than a Category P licensee;

(2) be the licensee's principal individual in authority and, in the case of a licensee other than a Category P licensee, responsible for actively supervising all LP-gas activities conducted by the licensee, including all appliance, container, portable cylinder, product, and system activities;

(3) have a working knowledge of the licensee's LP-gas activities to insure compliance with the LP-Gas Safety Rules;

(4) pass the appropriate management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses), or in the case of an applicant for a Category D license, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption);

(5) comply with the work experience or training requirements in subsection (g) of this section, if applicable;

(6) be directly responsible for all employees performing their assigned LP-gas activities, unless an operations supervisor is fulfilling this requirement; and

(7) submit any additional information as deemed necessary by the Section.

(c) Operations supervisors. An operations supervisor, in the case of a licensee other than a Category P licensee, shall comply with the following requirements:

(1) be an owner or employee of the licensee;

(2) pass the applicable management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses) or, in the case of a Category D license only, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption), before commencing or continuing the licensee's LP-gas activities at the outlet; and

(3) be directly responsible for actively supervising the LP-gas activities of the licensee at the designated outlet.

(d) In lieu of an operations supervisor requirement for a Category P license, the Category E, J, or other licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(1) prepare a manual containing, at a minimum, the following:

(A) a description of the basic characteristics and properties of LP-gas;

(B) an explanation of the various parts of an LP-gas cylinder, including what the purpose of each part is and how to operate the cylinder valve;

(C) complete instructions on how to properly transport cylinders in vehicles;

(D) a prohibition against moving or installing cylinder cages at any store location;

(E) a prohibition against taking or storing inside a building any cylinders that have or have had LP-gas in them;

(F) a requirement that all cylinders containing LP-gas be stored in a manner so that the relief valve is in the vapor space of the cylinder;

(G) a requirement that the employees who handle the cylinders know the location within the store of the manual and know the contents of the manual;

(H) instructions related to any potential hazards that may be specific to a location, including but not limited to the proper distancing of cylinders from combustible materials and sources of ignition;

(I) detailed emergency procedures regarding a leaking cylinder, including all applicable emergency contact numbers;

(J) a requirement that any accidents be reported to the Category E, J, or other licensee who prepares the manual, and detailed procedures for reporting any accidents;

(K) all Railroad Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(L) all provisions of Subchapter H ("Enforcement") of Chapter 113 of the Texas Natural Resources Code;

(M) a detailed description of the training provided to each employee of the Category P licensee who may be engaged in any activities covered by the Category P license; and

(N) a page for the signatures, printed names and dates of training for each individual trained at each outlet on this manual.

(2) provide a copy of the manual for display at each outlet or location of the Category P licensee;

(3) provide training as to the contents of the manual to each employee who may be engaged in any activities covered by the Category P license at all outlets or locations of the Category P licensee and maintain records regarding the employees of the Category P licensee who have been trained; and

(4) complete all three requirements of this subsection, for existing Category P licensees, prior to October 25, 2001, and within 45 days of any Category P license obtained on or after September 1, 2001.

(e) The Category P licensee is responsible for the following:

(1) insuring that each employee who is involved with the activities covered by the Category P license is knowledgeable about the contents of the manual and has signed and dated the signature page of the manual; and

(2) insuring that each such employee is aware of the location of the manual and can show the manual to employees of the Commission upon their request.

(f) Category P licensees. The company representative requirement for a Category P licensee may be satisfied by employing a Category E, J, or other licensee company representative if the Category E, J, or other company representative is authorized by the Category P licensee to assign and remove any employee who does not comply with the LP-Gas Safety Rules or who performs any unsafe LP-gas activities.

(g) Work experience substitution for Category E, F, G, I, and J. The assistant director for the Section may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends

and successfully completes the next available Category E, F, G, I, or J management-level training course, or a subsequent Category E, F, G, I, or J management-level training course agreed on by the assistant director and the applicant. The written request shall include a description of the individual's LP-gas experience and other related information in order that the assistant director may properly evaluate the request. If the individual fails to complete the training requirements within the time granted by the assistant director, the conditional qualification shall immediately be voided and the conditionally qualified company representative or operations supervisor shall immediately cease all LP-gas activities. Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title (relating to Training and Continuing Education Courses) prior to the Section issuing a certificate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503198
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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16 TAC §9.33, §9.53

The Commission adopts the repeals pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

16 TAC §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113, 9.115, 9.126, 9.129, 9.130, 9.132, 9.134, 9.140 - 9.143

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

§9.102. Notice of Stationary LP-Gas Installations.

(a) For a proposed installation with an aggregate water capacity of 10,000 gallons or more, an applicant shall send a copy of the filings required under §9.101(c) of this title (relating to Filings Required for Stationary LP-Gas Installations) by certified mail, return receipt requested or otherwise delivered, to all owners of real property situated within 500 feet of any proposed container location at the same time the originals are filed with the License and Permit Section of the Gas Services Division (the Section). The Section shall consider the notice to be sufficient when the applicant has provided evidence that copies of a complete application have been mailed or otherwise delivered to all real property owners. The applicant may obtain names and addresses of owners from current county tax rolls.

(b) An applicant shall notify owners of real property situated within 500 feet of any proposed container location if:

(1) the current aggregate water capacity of the installation is more than doubled in a 12-month period;

(2) the resulting aggregate water capacity of the installation will be more than 120,000 gallons; or

(3) the Section considers notice to be in the public interest.

(c) An applicant shall not be required to give notice for installations at "hot-mix" plants where LP-gas containers of 10,000 gallons aggregate water capacity or more are used as fuel storage supply for asphalt heating provided that:

(1) the applicant submits proof that such "hot-mix" operations will not exceed two years at the specified location; and

(2) the applicant has obtained approval from the fire marshal if the operations are within a city's limits or extraterritorial jurisdiction.

§9.103. Objections to Proposed Stationary LP-Gas Installations.

(a) Each owner of real property situated within 500 feet of the proposed location of any LP-gas containers of 10,000 gallon aggregate water capacity or more receiving notice of a proposed installation shall have 18 calendar days from the date the notice is postmarked to file a written objection using the LPG Form 500A sent to them by the applicant as described in §9.107(a)(1) of this title (relating to Hearings on Stationary LP-Gas Installations) with the License and Permit Section of the Gas Services Division (the Section). An objection is considered timely filed when it is actually received by the Commission.

(b) The Section shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

(1) does not comply with the *LP-Gas Safety Rules*, specifying which rules are violated;

(2) does not comply with the statutes of the State of Texas, specifying which statutes are violated; or

(3) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger. For purposes of this section, "danger" means an imminent threat or an unreasonable risk of bodily harm, but does not mean diminished property or esthetic values in the area.

(c) Upon review of the objection, the Section shall either:

(1) schedule a public hearing as specified in §9.107 of this title (relating to Hearings on Stationary LP-Gas Installations); or

(2) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is being returned. The objecting entity shall have 10 calendar days from the postmark of the Section's letter to file its corrected objection. Clarification of incomplete or nonsubstantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

§9.107. Hearings on Stationary LP-Gas Installations.

(a) Reason for hearing. The License and Permit Section of the Gas Services Division (the Section) shall call a public hearing if:

(1) the notice given to each real property owner situated within 500 feet of the proposed installation does not meet the requirements set forth in §9.102(a) of this title (relating to Notice of Stationary LP-Gas Installations);

(2) the Section receives an objection that complies with §9.103 of this title (relating to Objections to Proposed Stationary LP-Gas Installations); or

(3) the Section determines that a hearing is necessary to investigate the impact of the installation.

(b) Notice of public hearing. The Section shall give notice of the public hearing at least 21 calendar days prior to the date of the hearing to the applicant and to all real property owners who were required to receive notice of the proposed installation under §9.102 of this title (relating to Notice of Stationary LP-Gas Installations).

(c) Procedure at hearing. The public hearing shall be conducted in accordance with the Texas Government Code, Chapter 2001 et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the *LP-Gas Safety Rules*.

§9.134. Connecting Container to Piping.

LP-gas piping shall be installed only by a licensee authorized to perform such installation. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping installed by an individual on that individual's single family residential home. A licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22 with the Safety Division, identifying the unlicensed person who installed the LP-gas piping.

§9.140. Uniform Protection Standards.

(a) LP-gas transfer systems and storage containers shall be protected from tampering and/or vehicular traffic as specified in this section. New LP-gas containers which have never been installed or had LP-gas introduced into them, or other installations listed in paragraphs (1) - (4) of this subsection, are not required to comply with the fencing and guardrailing requirements in subsections (b) and (d) of this section. The fencing and guardrailing requirements also do not apply to the following:

(1) LP-gas systems and containers located at private residences;

(2) LP-gas systems and containers which service vapor systems where the aggregate storage capacity of the installation is less than 4,001 gallons, unless the LP-gas system, transfer system, or container is subject to tampering or vehicular traffic;

(3) LP-gas piping which contains no valves and which complies with all other applicable *LP-Gas Safety Rules*; and

(4) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled.

(b) In addition to NFPA 58, §§3.3.6.1, 3.4.2.4, 3.9.3.6, 4.2.3.8, 5.2.1.1, and 5.4.2.1, fencing at LP-gas installations shall comply with the following:

(1) Fencing material shall be chain link with wire at least 12 1/2 American wire gauge in size.

(2) Fencing shall be at least six feet in height at all points.

(3) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material.

(4) Gates in fences where bulkheads are installed shall be located directly in front of the bulkhead. Gates shall be locked whenever the area enclosed is unattended. The width of the gate shall be sufficient to prevent binding of the transfer hoses on the gate posts and to ensure breaking of the bulkhead pipe risers or nipples in the event of a pullaway. There shall be at least two means of emergency access from the fenced enclosure. If guard service is provided, it shall be extended to the LP-gas installation. Guard service shall be properly trained as set forth in §9.51(b)(4) of this title (relating to General Requirements for Training and Continuing Education). However, if a fenced area is not larger than 100 square feet in area, the point of transfer is within three feet of a gate, and any containers being filled are not located within the enclosure, a second gate shall not be required.

(5) Clearance of at least three feet shall be maintained between the fencing and the container, material handling equipment, and the entire dispensing system.

(6) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container shall be designated as perimeter fencing. If an LP-gas transfer system or container is located

inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifications set forth in subsection (d) of this section.

(7) The operating end of a container, including all material handling equipment and the entire dispensing system, shall be completely enclosed by fencing.

(c) Containers which are exempt from the fencing requirements include:

(1) ASME containers or manual dispensers originally manufactured to or modified to be considered by the Safety Division (the Division) as self-contained units. Self-contained units shall be protected as specified in subsection (d) of this section;

(2) DOT portable or forklift containers in storage racks or at single family dwellings used as private residences; and

(3) DOT portable or forklift containers that have been used in LP-gas service but are not awaiting use or resale.

(d) In addition to NFPA 58, §§3.2.4.2, 3.2.9.1(a)-(d), 3.2.9.2(d), 3.3.6.1, 3.9.3.8, 5.4.2.1, guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1) Where fencing is not used to protect the installation as specified in subsection (b) of this section, locks for the valves or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas.

(2) Vertical supports for guardrails shall be at least three- schedule 40 steel pipe or other material with equal or greater strength. The vertical supports shall be capped on the top or otherwise protected to prevent the entrance of water or debris into the guardpost; anchored in concrete at least 18 es below the ground; and rise at least 30 es above the ground. Supports shall be spaced four feet apart or less.

(3) The top of the horizontal guardrailing shall be secured to the vertical supports at least 30 es above the ground. The horizontal guardrailing shall be at least three- schedule 40 steel pipe or other material with equal or greater strength. The horizontal guardrailing shall be capped on the ends or otherwise protected to prevent the entrance of water or debris into the guardpost; and welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions, including the nature of the traffic to which the protected equipment is subjected.

(4) Openings in horizontal guardrailing, except the opening that is permitted directly in front of a bulkhead, shall not exceed three feet. Only one opening is allowed on each side of the guardrailing. A means of temporarily removing the horizontal guardrailing and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only through the 45-degree opening in front of the bulkhead or over the horizontal guardrailing.

(5) Clearance of at least three feet shall be maintained between the railing and any part of an LP-gas transfer system or container or clearance of two feet for retail cylinder filling or service station installations. The two posts at the ends of any railing which protects a bulkhead shall be located at 45-degree angles to the nearest corner of the bulkhead.

(6) The operating end of the container, including all material handling equipment and the entire dispensing system, and any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic shall be protected from this type of damage. The protection shall extend at least three feet beyond any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic.

(e) A combination of fencing and guardrails specified in subsections (b) and (d) of this section shall not result in less protection than using either fencing or guardrails alone.

(f) If exceptional circumstances exist or will exist at an installation which would require additional protection such as larger-diameter guardrailing, then the licensee or operator shall install such additional protection. In addition, the Division at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.

(g) LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.
Figure: 16 TAC §9.140(g)

(1) Unless colors are specified, lettering shall be in a color that sharply contrasts to the background color of the sign, and shall be readily visible to the public.

(2) Items 1, 2, and 3 in Table 1 may be combined on one sign.

(3) Items 1, 2, and 3 in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by guardrailing as required in subsection (d) of this section, and bulkheads as required by §9.143 of this title (relating to Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) Item 11 in the column entitled "Requirements" in Table 1 applies to facilities which have two or more containers.

(5) Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(h) Storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (d) of this section; or

(2) installing guardposts, provided that:

(A) the guardposts are at least three- schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guardpost, no more than four feet apart, and anchored in concrete at least 30 es below ground and rising at least 30 es above the ground; or

(B) if the guardposts cannot be anchored in concrete at least 30 es below ground, they are constructed of at least four- schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guardpost, and attached by welding to a minimum 8- by 8- steel plate at least 1/2 thick. The guardposts and steel plate shall be permanently installed.

(3) Guardrail or guardposts are not required to be installed if:

(A) any portable cylinder exchange rack is located against a building or attached structure;

(B) the rack is located on a walkway which is a minimum of four es in height above the grade of the driveway or parking space;

(C) a minimum six--high cement parking wheelstop is installed on the driveway or parking space, or a four--high cement parking wheelstop is installed on the driveway or parking space at least 12 es from the curb;

(D) the cement parking wheelstop is secured against displacement; and

(E) the distance from the cement parking wheelstop to any portable cylinder exchange rack is 48 es or more for a six-inch-high wheelstop, or 60 es or more for a four--high wheelstop.

(4) A wheelstop is not required to be installed if a curb is at least six es tall and the cylinder exchange rack is at least 48 es away from the curb.

(5) If exceptional circumstances exist or will exist at the location of a storage rack which would require additional protection such as larger-diameter guardrailing or guardposts, then the licensee or operator of the installation shall install such additional protection. In addition, the Division at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the specific additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.

§9.143. Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

(a) Instead of NFPA 58, §§3.2.19.1, 3.2.19.2, 3.2.19.3, and 3.2.19.6, effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical bulkhead and pneumatically-operated internal valves and pneumatically-operated emergency shutoff valves (ESVs), as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes, Additional Requirements, or Corrections) for NFPA 58, §§3.2.18.1 and 3.3.3.6. In lieu of a pneumatically-operated internal valve or a pneumatically-operated ESV, a back check valve where the flow is into the container only may be installed.

(1) The pneumatic ESVs shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 36 es long installed between the ESV and the bulkhead.

(2) The ESVs shall be installed in the piping so that any break resulting from a pullaway will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection and will activate the ESV at the bulkhead and the primary discharge valves at the container or containers. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Temperature sensitive elements of ESVs shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be documented in writing and kept in a readily accessible location for one year following the performed tests.

(5) Pneumatically-operated internal valves and ESVs shall be interconnected and incorporated into at least one remote operating system.

(b) Within two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead and/or backflow check valves where the flow is in one direction into the container and ESVs installed shall install vertical bulkheads and pneumatic ESVs.

(c) Existing installations which have horizontal bulkheads and/or backflow check valves where the flow is in one direction into the container or cable-actuated ESVs are not required to replace that equipment except as follows:

(1) If the horizontal bulkhead requires replacement, it shall be replaced with a vertical bulkhead;

(2) If a backflow check valve or a cable-actuated ESV requires replacement, it shall be replaced with a pneumatic actuated ESV; or

(3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original location to another location, no matter what the distance from the original location, then the installation shall comply with the requirements for a vertical bulkhead and pneumatic actuated ESVs.

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) Bulkheads shall be installed for both liquid and vapor return piping;

(2) Only one or two transfer hoses shall be attached to a pipe riser. If two hoses are simultaneously connected to one or two transports, the use of the two hoses shall not prevent the activation of the ESV in the event of a pullaway;

(3) Both liquid and vapor transfer hoses shall be plugged or capped;

(4) Bulkheads shall be located at least 10 feet from any aboveground container or containers and a minimum of 10 feet horizontally from any portion of a container or valve exposed aboveground

on any underground or mounded container. If the 10-foot distance cannot be obtained, the licensee or nonlicensee shall inform the Safety Division (the Division) in writing and include all necessary information. The Division may grant administrative distance variances to a minimum distance of five feet. If the licensee or nonlicensee requests that the bulkhead be closer than five feet to the container or containers, the licensee or nonlicensee shall apply for an exception to a safety rule as specified in §9.27 of this title (relating to Application for an Exception to a Safety Rule);

(5) Horizontal bulkheads shall not be converted to vertical bulkheads;

(6) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a pullaway;

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.
Figure: 16 TAC §9.143(d)(7) (No change.)

(A) Six- steel channel iron shall be used;

(B) Legs shall be four- schedule 80 piping;

(C) The top crossmember of a vertical bulkhead shall be six- standard weight steel channel iron. The channel iron shall be installed so the channel portion is pointing downward to prevent accumulation of water or other debris. The height of the top crossmember above ground shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pullaway;

(D) The kick plate shall be at least 1/4 steel plate installed at least 10 es from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed to prevent torsional stress from being placed on the piping to the pipe risers;

(E) Either a schedule 40 pipe sleeve or a 3,000-pound coupling shall be welded between the top crossmember and the kick plate;

(i) Pipe sleeves shall have a clearance of 1/4 or less for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a schedule 80 pipe collar, a minimum 12- schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling;

(ii) If a 3,000-pound coupling is used, no collar is required; however, the minimum 12- length of schedule 80 threaded pipe riser and an elbow or other fitting between the bulkhead and hose coupling are required;

(iii) Elbows or other fittings shall comply with NFPA 58, §2.4.4 and shall direct the transfer hose from vertical to prevent binding or kinking of the hose.

(8) In lieu of a minimum 12- nipple or a vertical bulkhead, swivel-type piping (breakaway loading arm) may be installed. The swivel-type piping shall meet all applicable provisions of the LP-Gas Safety Rules. The swivel-type piping may also be used for unloading, but shall not be used in lieu of ESVs. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(9) The Division may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(e) In addition to NFPA 58, §2.3.3.2 as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections), ESVs and internal valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards). Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV; beginning September 1, 2005, for new installations, this distance shall be a minimum of 25 feet. Existing installations shall comply by August 1, 2001. The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12- nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) The bulkheads, internal valves, backflow check valves, and ESVs shall be kept in working order at all times in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*. If the bulkheads, internal valves, backflow check valves and ESVs are not in working order in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*, the licensee or operator of the installation shall immediately remove them from LP-gas service and shall not operate the installation until all necessary repairs have been made.

(g) By February 1, 2003, rubber flexible connectors which are 3/4- or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall be replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 36 es in length or less, and shall comply with all applicable *LP-Gas Safety Rules*. Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) If necessary to increase LP-gas safety, the Division may require a pneumatically-operated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 or one in size.

(i) Stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more are exempt from subsections (a) and (b) of this section provided:

(1) each container is filled solely through a 1 3/4 double back check filler valve installed directly into the container; and

(2) the LP-gas installation is not used to fill an LP-gas transport.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503200
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §§9.201 - 9.204, 9.208, 9.211

The Commission adopts the amendments and new rule pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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16 TAC §9.207

The Commission adopts the repeal pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503201
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §§9.303, 9.308, 9.312

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

§9.308. Identification of Piping Installation.

(a) In addition to the requirements of NFPA 54, Part 3, Gas Piping Installation, LP-gas piping shall be installed, altered, repaired, pressure tested, and leakage tested only by persons properly licensed or certified by the Commission.

(b) Upon completion of the installation, alteration, repair, or pressure testing of an LP-gas piping system, the licensee shall attach to the end of the piping nearest the container a decal or tag of metal or other permanent material indicating the following information:

(1) the licensee's name;

(2) the LP-gas license number; and

(3) the year the piping was installed, altered, repaired, or pressure tested.

(c) A single identification decal or tag may be used to satisfy the requirements in §§9.141, 9.206, and 9.307 of this title (relating to Uniform Safety Requirements, Vehicle Identification Labels, and Identification of Converted Appliances, respectively) provided the decal or tag meets all the requirements of those sections.

(d) Licensees are not required to place a decal or tag following the performance of a leakage test on an LP-gas piping system. Licensees shall retain documentation of all leakage tests and shall make that documentation available for Commission inspection upon request.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503203
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §9.403

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503204
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER F. ADOPTION BY REFERENCE OF NFPA 51 (STANDARD FOR THE DESIGN AND INSTALLATION OF OXYGEN-FUEL GAS SYSTEMS FOR WELDING, CUTTING, AND ALLIED PROCESSES)

16 TAC §§9.501 - 9.503, 9.506 - 9.508

The Commission adopts the repeals pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503205
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.1

The Texas State Board of Examiners of Psychologists adopts amendments to §463.1, concerning Types of Licensure without changes to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3074).

The amendments are being adopted in order to facilitate statutory changes in provisional licensure set by HB 1015, of the 79th Legislature.

The adopted amendments will make adhere to changes in the law.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503264

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: August 25, 2005
Proposal publication date: May 27, 2005
For further information, please call: (512) 305-7700

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PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.1

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §651.1, concerning Occupational Therapy Board Fees, with changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3520).

The section was amended to raise the fees to support the FY 2006/2007 Appropriations Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapters 452 - 454, of the Occupations Code are affected by this amended section.

§651.1. Occupational Therapy Board Fees.

(a) Regular License.

(1) Occupational Therapist--$120.

(2) Occupational Therapy Assistant--$93.

(3) Application to retake the certification exam, OT--$25.

(4) Application to retake the certification exam, OTA--$25.

(b) Temporary License.

(1) Occupational Therapist--$70.

(2) Occupational Therapy Assistant--$55.

(c) Provisional License.

(1) Occupational Therapist--$80.

(2) Occupational Therapy Assistant--$75.

(d) Active to Inactive Status.

(1) Occupational Therapist--a fee to equal one-half the renewal fee.

(2) Occupational Therapy Assistant--a fee to equal one-half the renewal fee.

(e) Inactive Status to Active Status.

(1) Occupational Therapist--a fee equal to the renewal fee.

(2) Occupational Therapy Assistant--a fee equal to the renewal fee.

(f) Renewal.

(1) Active.

(A) Occupational Therapist--$217.

(B) Occupational Therapy Assistant--$167.

(2) Inactive.

(A) Occupational Therapist--a fee equal to one-half the renewal fee.

(B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee.

(g) Late Fees Renewal (all licensees).

(1) Late 90 days or less--the renewal fee plus late fee which is equal to one-half of the certification examination fee.

(2) Late more than 90 days but less than one year--the renewal fee plus late fee which is equal to the certification examination fee.

(h) License Restoration Fee for all licensees--a fee equal to the certification examination fee.

(i) Registration Fees--Facilities.

(1) Registration of First Facility--$314.

(2) Registration of Each Additional Facility--$124.

(j) Renewal Fees--Facilities.

(1) Renewal of Registration of First Facility--$306.

(2) Renewal of Registration of Each Additional Site--$126.

(k) Late Fees--All Facilities.

(1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.

(l) Facility Restoration (all facilities)--Late one year or more-renewal fee(s) plus a restoration fee which is double the renewal fee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503267
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Effective date: September 1, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-6900

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22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §651.2, concerning

Physical Therapy Board Fees with changes to the proposed text as published in the June 17, 2005, issue of *Texas Register* (30 TexReg 3520).

The section was amended to raise the fees to support the FY 2006/2007 Appropriations Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapters 452 - 454, of the Occupations Code are affected by this amended section.

§651.2. Physical Therapy Board Fees.

(a) Application/Permanent License.

(1) PT--$170.

(2) PTA--$116.

(b) Application to Retake the Examination.

(1) PT--$25.

(2) PTA--$25.

(c) Temporary License.

(1) PT--$80.

(2) PTA--$60.

(d) Provisional License.

(1) PT--$80.

(2) PTA--$75.

(e) Active to Inactive License.

(1) PT--a fee equal to one-half of the renewal fee.

(2) PTA--a fee equal to one-half of the renewal fee.

(f) License Renewal

(1) Active license

(A) PT--$217.

(B) PTA--$167.

(2) Inactive license. (Inactive license renewal fees are effective September 1, 2001)

(A) PT--a fee equal to one-half of the renewal fee.

(B) PTA--a fee equal to one-half of the renewal fee.

(g) Inactive to Active License (Reactivation).

(1) PT--a fee equal to the renewal fee.

(2) PTA--a fee equal to the renewal fee.

(h) Late Fees--Renewal (all licensees).

(1) Late 90 days or less--the renewal fee plus a late fee equal to one-half of the examination fee.

(2) Late more than 90 days but less than one year--the renewal fee plus a fee equal to the examination fee.

(i) License Restoration (all licensees, under the conditions set our in §341.6 of the Physical Therapy Board Rules)--a fee equal to the examination fee.

(j) Facility Registration.

(1) First Facility--$314.

(2) Additional site--$124.

(k) Facility Renewal.

(1) First Facility--$306.

(2) Additional site--$126.

(l) Late Fees--All Facilities.

(1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.

(m) Facility Restoration (all facilities)--renewal fee(s) plus a restoration fee that is double the renewal fee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503268
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Effective date: September 1, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-6900

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22 TAC §651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §651.3, concerning Administrative Services Fees with changes to the proposed text as published in the June 17, 2005, issue of *Texas Register* (30 TexReg 3520).

The section was amended to raise the fees to support the FY 2006/2007 Appropriations Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapters 452 - 454, of the Occupations Code are affected by this amended section.

§651.3. Administrative Services Fees.

(a) Verification /Transfer of Licensure--$50.

(b) Duplicate/Replacement License--$30.

(c) Duplicate Renewal Certificate/Wallet Card--$30.

(d) Duplicate of Facility Registration Certificate--$30.

(e) Reinstatement of Suspended or Revoked License--$50.

(f) Insufficient Funds Check Fee--$25.

(g) ACH Return Fee--$25.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Effective date: September 1, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-6900

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners adopts the repeal of §§781.101, 781.102, 781.201-781.217, 781.301-781.315, 781.401, 781.402, 781.501-781.514, 781.601-781.610, 781.701-781.707, 781.801-781.807 and new §§781.101, 781.102, 781.201-781.217, 781.301-781.317, 781.401-781.418, 781.501-781.515, 781.601-781.610, 781.701-781.707, and 781.801-781.807, concerning the licensing of social workers. New §781.508 was adopted with changes to the proposed rule text that was published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2972). The repeal of §§781.101, 781.102, 781.201-781.217, 781.301-781.315, 781.401, 781.402, 781.501-781.514, 781.601-781.610, 781.701-781.707, 781.801-781.807 and new §§781.101, 781.102, 781.201-781.217, 781.301-781.317, 781.401-781.418, 781.501-781.507, 781.509-781.515, 781.601-781.610, 781.701-781.707, and 781.801-781.807 were adopted without changes and, therefore, the sections will not be republished.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 781.101, 781.102, 781.201-781.217, 781.301-781.315, 781.401, 781.402, 781.501-781.514, 781.501-781.515, 781.601-781.610, 781.701-781.707, and 781.801-781.807 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of social workers are still needed; however, the rules were repealed and adopted as new rules as described in this preamble.

The repeals and new sections are a result of comprehensive rule review undertaken by the board, identified stakeholder groups and the board's staff as a result of the passage of Senate Bill (SB) 810 in the 78th Regular Session of the Texas Legislature. This legislation was the result of a taskforce of stakeholders groups and the board in response to House Bill (HB) 3365 of the 77th Regular Session of the Texas Legislature regarding the independent practice of social work. SB 810 created new categories of social worker licensure, abolishing the Social Worker Associate category, a statute of limitations on complaints and modified requirements for board membership based on licensing categories and the creation of independent practices status for all levels of licensure.

In general, the board and stakeholder group representatives reviewed each section and adopted the repeal, readoption or revision of each section in order to ensure appropriate subchapter, section and paragraph organization; to modify rules in accordance with legislative changes impacting social work practice; to ensure clarity and improve spelling, grammar and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations, eliminate unnecessary catch-titles, and eliminate repetitive use of long titles for terms that have been assigned short titles by definition; to delete repetitive, obsolete, unenforceable or unnecessary language; to improve draftsmanship; and to make the rules more understandable and usable.

There were no public comments received regarding the proposal. However, the following change was made due to a staff comment.

CHANGE: Concerning §781.508(a)(1), the word "annually" was changed to "biennially" to read as follows: 30 clock hours of continuing education "biennially" from board approved providers. A clock hour is defined as 60 minutes of standard time;" which reflects the original intent of the rule by the board for licensure renewal.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.101, §781.102

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503234
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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22 TAC §781.101, §781.102

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
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Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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SUBCHAPTER B. THE BOARD

22 TAC §§781.201 - 781.217

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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22 TAC §§781.201 - 781.217

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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SUBCHAPTER C. LICENSES AND LICENSING PROCESS

22 TAC §§781.301 - 781.315

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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22 TAC §§781.301 - 781.317

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
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Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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SUBCHAPTER D. CODE OF ETHICS AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §781.401, §781.402

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
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Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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SUBCHAPTER D. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.401 - 781.418

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.501 - 781.514

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503242
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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22 TAC §§781.501 - 781.515

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

§781.508. Hour Requirements for Continuing Education.

(a) A licensee must complete:

(1) 30 clock hours of continuing education biennially from board approved providers. A clock hour is defined as 60 minutes of standard time; and

(2) a minimum of three hours of continuing education biennially in professional ethics and social work values each year as part of the required 30 clock hours. A licensee may earn credit for ethics hours as a presenter or participant.

(b) On petition by a licensee, the executive director may waive part, but not all, of the continuing education renewal requirements for good and just cause or may permit the licensee an additional period of time in which to complete all continuing education requirements. In all cases, the decision of the executive director may be appealed to the Professional Development Committee of the board. Should the committee overturn the decision of the executive director, the committee may elect to waive the late fees accrued or determine that the late fees should be paid by the licensee. Should the decision of the executive director be upheld by the committee and the licensee be denied in the appeal, all late fees accrued will apply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503243
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §§781.601 - 781.610

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503244
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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22 TAC §§781.601 - 781.610

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503245
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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SUBCHAPTER G. FORMAL HEARINGS

22 TAC §§781.701 - 781.707

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503246
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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22 TAC §§781.701 - 781.707

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503247
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §§781.801 - 781.807

The repeals are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503248
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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22 TAC §§781.801 - 781.807

The new rules are adopted under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503249
Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
Effective date: August 24, 2005
Proposal publication date: May 20, 2005
For further information, please call: (512) 458-7236

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG) adopts amendments to 22 Texas Administrative Code Chapter 851, §851.80, concerning licensing fees. The amendments to §851.80 are adopted without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3530).

Adopted amendments to the existing rule establish a $25 examination processing fee for all examinations administered by the Board in addition to adopted language for payment of required fees as set for the by both the National Association of State

Boards of Geology (ASBOG) and the Council of Soil Science Examiners (CSSE) for administration of their specific examinations. Adopted amendments also establish a $200 one-time temporary licensing fee for all geoscientists to practice in their respective field of geoscience in the State of Texas for no more than the mandated 90 day period as specified in the Geoscience Practice Act. The license renewal fee is now adopted to be $168 and a newly adopted Verification of Licensure fee will be $15. The Fundamentals and Practice fees for Geophysics are now adopted to be $150 each. Legislation enactment in 2001 of Senate Bill 405 Subchapter D, §4.01 granted the Board general rulemaking authority to adopt and enforce rules consistent with this act necessary for the performance of its duties and §4.02 granted authority for the Board to set reasonable and necessary fees to be charged to all applicants and license holders, including fees for applications, examinations, licensure, and renewal of a license including basing a fee for an examination in a discipline of geoscience on the costs associated with preparation, administration, and the grading of the examination. The adopted amendments to the rule provide language clarity to the fee requirement for administration of each of the agency's examinations taken relevant to the applicant's geoscience discipline(s) as well as amend the licensing fee structure through the inclusion of additional language to the existent licensing fee requirement as set by the Board in order to establish both new fee requirements and increase to the renewal fee to allow the Board attainment of its appropriated general revenue funding level.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Occupations Code, Chapter 1002, §1002.151 and §1002.152 which authorize the Board to adopt and enforce rules consistent with the Geoscience Practice Act and necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503265
Michael D. Hess
Executive Director
Texas Board of Professional Geoscientists
Effective date: September 1, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 936-4401

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

SUBCHAPTER A. WAIVER OF VISA REQUIREMENT FOR PHYSICIANS

25 TAC §§13.1, 13.2, 13.5, 13.8

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) adopts amendments to §§13.1, 13.2, 13.5 and 13.8, concerning the recommendation for J-1 visa waivers for physicians to serve in health professional shortage areas in Texas. The amendments to these rules are adopted without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2649) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The department, after considering alternative changes, amended the rules to allow more flexibility, and made amendments to clarify the program for the medical community and the public in determining appropriate practice locations for J-1 visa waiver physicians.

SECTION-BY-SECTION SUMMARY

Amendments to §13.1 remove the defined terms "fully served", "NHSC" and "primary care specialist" because these terms were removed from §13.2. Amendments to §13.2 remove the 3000:1 or fewer physicians per capita provision and remove language concerning primary care specialists, psychiatrists and non-primary care specialists and the other terms deleted from the definitions in §13.1. Language was added that recommendations will be made in areas that meet shortage area requirements as identified by the program annually. Amendments to §13.5 clarify employment contract requirements concerning scheduled work hours and remove language concerning Education Code, §51.949, as this section is no longer applicable to the J-1 visa waiver program. Amendments to §13.8 also remove language concerning the Education Code, §51.949.

COMMENTS

The department did not receive any comments regarding the proposed rules during the comment period.

STATUTORY AUTHORITY

These amendments are adopted under Health and Safety Code, §12.0127, which authorizes the department to request waiver of certain residence requirements for alien physicians who agree to practice in medically underserved areas; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of Health and Human Services by the department and for the administration of Chapter 1001, Health and Safety Code.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503207

Cathy Campbell
General Counsel
Department of State Health Services
Effective date: August 22, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 458-7236

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PART 11. TEXAS CANCER COUNCIL

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.8

The Texas Cancer Council adopts an amendment to §701.8, concerning charges for copies of public records without changes to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3078) and will not be republished.

The amendment is adopted to update the name of agency whose rules TCC now uses to establish charges for copies of public records.

No public comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Health and Safety Code Annotated, §102.002 and §102.009, which provides the Texas Cancer Council with the authority to develop, implement, and revise the Texas Cancer Plan, and Government Code, §552.262 which requires state agencies to use the related charges for public records rules of the Texas Building and Procurement Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2005.

TRD-200503266
Sandra Balderrama
Executive Director
Texas Cancer Council
Effective date: August 25, 2005
Proposal publication date: May 27, 2005
For further information, please call: (512) 463-3190

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 25. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION AND CERTIFICATION

The Texas Commission on Environmental Quality (commission) adopts amendments to §§25.2, 25.6, and 25.9 *without changes* to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1006) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to conform existing rules with statutory changes made by Senate Bill (SB) 934, 78th Legislature, 2003, and to refer to more recent laboratory accreditation standards adopted by the National Environmental Laboratory Accreditation Conference (NELAC).

SECTION BY SECTION DISCUSSION

Adopted §25.2, Definitions, adds new paragraph (20) to define same site as all structures, other appurtenances, and improvements located on one or more contiguous properties. The definition clarifies which on-site or in-house environmental laboratories may provide data to the commission without obtaining accreditation. Previously existing paragraph (20) is renumbered as paragraph (21) to accommodate the new definition.

Adopted §25.6, Conditions Under Which the Commission May Accept Analytical Data, amends paragraph (1) to revise subparagraph (B) concerning on-site and in-house environmental laboratories located in other states and accredited or periodically inspected by those states and adds subparagraph (C) concerning on-site and in-house environmental laboratories performing work for companies with units located at the same site or performing work without compensation for governmental agencies or charitable organizations. These changes incorporate statutory changes made by SB 934.

Adopted §25.9, Standards for Environmental Testing Laboratory Accreditation, replaces the phrase "approved May 2001" with "Chapters 3, 4, and 5, adopted July 2002, and Chapters 1, 2, and 6, adopted June 2003" to refer to the most recent laboratory accreditation standards adopted by NELAC.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, Chapter 2001, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking has two major components. First, it authorizes the commission to accept data from an on-site or in-house environmental testing laboratory that: 1) is located in another state, provided the laboratory is either accredited or inspected by the state; and 2) prepares data for another company with a unit located on the same site, or prepares the data without compensation for a governmental or charitable organization. Second, the rulemaking changes a reference to laboratory accreditation standards to reflect more recent standards adopted by the NELAC. These amendments do not meet the definition of a "major environmental rule."

The adopted rules implement SB 934, 78th Legislature, 2003. These rules are not a major environmental rule and do not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, Chapter 2001, §2001.0225, these adopted rules do not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal

program. The United States Environmental Protection Agency does not have a federal program for laboratory accreditation nor does it establish requirements for states implementing their own laboratory accreditation program. The adopted rules do not exceed a standard set by federal law nor exceed the requirement of a delegation agreement because there is no federal authority regarding laboratory accreditation.

These revisions do not adopt a rule solely under the general powers of the commission and do not exceed an express requirement of state law. The requirements implemented through these rules are expressly defined under Texas Water Code (TWC), Chapter 5, Subchapter R, which requires the commission to enact rules governing the accreditation of environmental laboratories.

TAKINGS IMPACT STATEMENT ASSESSMENT

The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to these adopted amendments because the amendments are not a taking as defined in Chapter 2007 or a constitutional taking of private real property. The purpose of the adopted amendments is to implement SB 934, 78th Legislature, 2003, and update referenced NELAC standards.

Promulgation and enforcement of these adopted rules will not affect private real property, which is the subject of the rules because the amendments will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The rules only apply to environmental testing laboratories that submit data to the commission for use in its decisions. Property values will not be decreased, because the amendments will not limit the use of real property. Thus, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the adoption is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in 31 TAC §505.11, nor will it affect any action or authorization identified in §505.11. Therefore, this rulemaking is not subject to the CMP.

PUBLIC COMMENT

The comment period closed on March 28, 2005. The commission received no comments.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §25.2, §25.6

STATUTORY AUTHORITY

The amendments are adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program; and SB 934, 78th Legislature, 2003.

The adopted amendments implement TWC, §5.127.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503250
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 24, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER B. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION

30 TAC §25.9

STATUTORY AUTHORITY

The amendment is adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program.

The adopted amendment implements TWC, §5.802 and §5.805.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2005.

TRD-200503251
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 24, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.60

The Texas Juvenile Probation Commission adopts the repeal of §341.60 relating to electronic data interchange specifications

without change as published in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3400) and will not be republished.

TJPC adopts this repeal in an effort not to overlap with new §341.60, which provide structural and substantive changes and clarify existing specifications and will become effective January 1, 2006.

No public comment was received.

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503194
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: January 1, 2006
Proposal publication date: June 10, 2005
For further information, please call: (512) 424-6710

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37 TAC §341.60

The Texas Juvenile Probation Commission adopts new §341.60 relating to electronic data interchange specifications without change as published in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3401) and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received.

This standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by this new standard.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503195
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: January 1, 2006
Proposal publication date: June 10, 2005
For further information, please call: (512) 424-6710

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

General Land Office

Title 31, Part 1

In accordance with §2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 3 relating to General Provisions, including, Subchapter A, relating to Property Accountability, §3.1; Subchapter B, relating to Training And Education Of Employees, §§3.21-3.24; Subchapter C, relating to Services And Products, §§3.30-3.31; Subchapter E, relating to Purchasing, §3.50. This review of Chapter 3 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 Tex Reg 9697).

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. This Notice of Intent to Review of 31 TAC, Part 1, Chapter 3, General Provisions, applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200503316
Trace Finley
Policy Director
General Land Office
Filed: August 9, 2005

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In accordance with §2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 8 relating to Gas Marketing Program, §§8.1 - 8.10. This review of Chapter 8 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 Tex Reg 9697).

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. This Notice of Intent to Review of 31 TAC, Part 1, Chapter 8, Gas Marketing Program, applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200503317
Trace Finley
Policy Director
General Land Office
Filed: August 9, 2005

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In accordance with §2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 13 relating to Land Resources, including, Subchapter A, relating to Rules, Practice and Procedures for Land Leases and Trades, §§13.1-13.3; Subchapter B, relating to Rights-Of-Way Over Public Lands, §§13.11-13.20; Subchapter F, relating to Application To Purchase Or Lease Vacant And Unsurveyed Public School Land, §§13.71-13.86; Subchapter G, relating to Vacant Land, §§13.87-13.94. This review of Chapter 13 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 Tex Reg 9697).

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. This Notice of Intent to Review of 31 TAC, Part 1, Chapter 13, Land Resources, applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200503318
Trace Finley
Policy Director
General Land Office
Filed: August 9, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §9.10(b)

§9.10. Employee Level Examination Requirements for Licenses by Category *(Revised September 2005)*
Table 1

License Categories	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Employee Level Exams Offered:																
1. Bobtail Exam (includes Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel exams) (covers leak check, lighting of appliances, regulator change-out, and thermocouple changing)					*											
2. Transport Driver Exam			*		*											
3. Engine Fuel Exam					*							*				
4. DOT Portable Cylinder Filling Exam					*	*			*	*						
5. Recreational Vehicle Technician Exam					*								*			
6. Service and Installation Exam (covers activities for the LP-gas system, plus containers and appliances)				*	*						*			*		
7. Appliance Service and Installation Exam (covers appliance activities from the appliance gas stop through the venting system)				*	*									*		
8. Motor/Mobile Fuel (Fuel Dispenser) Exam					*		*		*	*						

Figure: 16 TAC §9.140(g)

§9.140. Uniform Protection Standards -- Table 1 *(Revised September 2005)*

Requirements	Automatic Dispenser Area	Storage Racks for DOT Portable or Forklift Containers	Licensee or Non-Licensee ASME 4001+ Gal. A.W.C.	Any Licensee Installation (DOT Container Filling and/or Service Station Only)
1. Red letters at least 2" high (or at least 1 1/4" high for storage racks for DOT portable or forklift cylinders) on white or aluminum background: NO SMOKING	*	*	*	*
2. Red letters at least 4" high on white or aluminum background: WARNING FLAMMABLE GAS			*	
3. Black letters at least 4" high: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*	
4. Letters at least 1/2" high: EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLE MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	*			*
5. Letters at least 2" high on each operating side of the dispenser: PROPANE	*			
6. Block letters at least 2" high on a background of contrasting color to the letters, including instructions on activation and visible from the point of transfer: PROPANE (or LP-GAS) EMERGENCY SHUTOFF	*		*	*
7. Letters at least 4" high on container or 1 1/4" high on cylinder exchange **or storage** rack indicating contents: LP-GAS or BUTANE or PROPANE and FLAMMABLE		*	*	*
8. Letters at least 4" high on a background of contrasting color to the letters, marked on both sides or both ends of any container holding unodorized gas: NOT ODORIZED			*	*
9. Letters at least 4" high: Name of Licensee (not required for non-licensee installations)			*	*
10. Letters at least 2" high on operating end of container: WORKING PRESSURE ____ PSIG or WORK PRESS. ____			*	*
11. If more than one container, letters at least 2" high on operating end of each container: CONTAINER NO. ____ or TANK NO. ____			*	*

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: Feral Hog Damage Abatement Program

Statement of Purpose. The Texas Department of Agriculture (TDA) requests proposals for the Feral Hog Damage Abatement Program. The purpose of this two-year grant program is to develop and implement improved feral hog abatement practices within the State of Texas. A total amount of up to $500,000 may be awarded over the two-year period.

Eligibility. Grant proposals will be accepted from public non-profit research institutions. This includes institutions of higher education and governmental research entities. Joint efforts between eligible entities are encouraged.

Eligible Projects.

1. Single, Geographically-Specific Projects. Each project proposal should be geographically specific and based on a defined ecological region. Proposals should focus on a region where agricultural enterprises are experiencing severe economic losses due to damage caused by large feral hog populations and should specifically target the most economically vulnerable areas/crops. Funding for single geographically-specific projects is limited to $125,000 per proposal and must meet the objectives listed below.

2. Statewide Project. A statewide project proposal should identify four or more regions in the state that are experiencing severe economic loss to agricultural enterprises due to large feral hog populations. The proposal must outline the methodology used to determine the regions where feral hog control would yield the maximum economic net return to agricultural producers for the effort and expense invested. Funding is limited to $500,000 per proposal and must meet the objectives listed below.

Researchers may submit separate proposals for different regions or may submit a single statewide proposal.

Objectives. All Project proposals must include the following objectives:

1. Develop and Test Control Methods and Systems. Researchers shall determine the most effective and long-term means to reduce feral hog populations and limit economic impact on the targeted region. Researchers should test the use of both basic and state-of-the-art-control methods using an integrated approach.

2. Economic Return. Researchers should quantify the economic returns of control within differing crop type(s) (row crop, specialty crop, pastureland, etc.) to help determine the cost/benefit ratio for each.

3. Summarize data on feral hog population and the extent of the agricultural damage caused by the population within the studied area.

4. Information Dissemination. Projects should develop educational information distribution methods that emphasize cooperative efforts among producers to maximize effectiveness of the control efforts, as well as the development of skills to determine the appropriate application of control methods.

Proposal Limitations.

Geographically specific projects are limited to no more than $125,000 per project.

Statewide projects are limited to no more than $500,000 per project.

Projects may not exceed 2 years.

Proposals may not include more than 10% in indirect costs.

Proposal/Funding Revisions.

TDA reserves the right to fund projects partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

Eligible Expenses. Expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits;

Travel - domestic only;

Equipment - nonexpendable, tangible personal property that has a useful life of more than one year and costs $1,000 or more;

Supplies and direct operating expenses - equipment that costs less than $1,000, research and office supplies, postage, telecommunications, printing, etc.; and

Indirect costs - no more than 10%.

Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Refer to the Uniform Grant Management Standards for more detailed information - http://www.governor.state.tx.us/divisions/stategrants/guidel ines/files/UGMS062004.doc.

Following are some examples of these ineligible expenses:

Alcoholic beverages;

Entertainment;

Contributions - charitable or political;

Expenses falling outside of the contract period;

Expenditures not specifically listed in the project budget; and

Expenses that are not adequately documented.

Submission Requirements. Each proposal may not exceed fifteen (15) pages and must include the following criteria:

Cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the principal researchers. Indicate who is designated as the lead researcher and point of contact;

Project summary, not to exceed one page. Include a statement about whether project is statewide or geographically specific. If geographically specific, indicate the impact area by ecological region and county listing;

1. Identification of the key personnel to be involved in the project, including information on their experience;

2. Performance objectives;

3. Work plan;

4. Detailed description of the anticipated beneficial impact on agriculture and deliverables; and

5. Detailed project budget outlining anticipated expenses including but not limited to: personnel, travel, supplies, and equipment costs along with justification for proposed line item expenditures.

Reporting Requirements. Approved projects are required to submit the following reports:

1. Project reports on a quarterly basis from one to three pages in length detailing accomplishment of project objectives for the time periods specified in the award document;

2. Final compliance project report due either upon completion of the project or thirty (30) days after the termination of the contract. The final report shall be submitted in a hard copy format and an electronic format on a diskette utilizing Word. The final report shall contain:

a. A project summary - history of the project, its objectives, importance, effort, results, and commercial applications of the project;

b. A description of the successes, challenges, and any limitations of the program;

c. Technical and economic content - overall background of the project and the part (if any) that research plays in providing results, discussion of the technical, social and other benefits to the local community and to Texas, discussion of the economics of the project, including direct impact on local communities (jobs) and/or indirect impact (related businesses), and commercialization of the project; and

d. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts; and

3. Budget reports on a quarterly basis for the time periods specified in the award document that details the grant award spent to date.

4. Final Budget report is due thirty (30) days after the completion of the project or the termination of the contract.

General Compliance Information.

All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

Upon grant award, TDA and the Texas State Auditor's Office shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project.

In any year in which a financial audit is conducted, a copy must be submitted to both TDA, including the audit transmittal letter, management letter, and any schedules in which the grantee's funds are included.

In accordance with Texas Government Code Ann., 783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees will be provided a copy or it may be downloaded from http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc.

Deadline and Submission Information. Proposals should be submitted to Catherine Wright, Grants Manager, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m. September 30, 2005. One original and seven copies must be submitted. Fax copies will not be accepted.

Please contact Catherine Wright at (512) 463-7700 or by email at Catherine.Wright@agr.state.tx.us with any questions you may have.

Evaluation and Award Information. All proposals will be subject to evaluation based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. TDA reserves the right to accept or reject any or all proposals submitted. TDA reserves the right to fund proposals from alternative funding sources if the proposal meets the stipulated requirements of that RFP. TDA is under no legal or other obligation to award a grant on the basis of this RFP or any other RFP. The Commissioner will make final funding decisions.

Texas Public Information Act. All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200503321
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: August 10, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 29, 2005, through August 4, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 10, 2005. The public comment period for these projects will close at 5:00 p.m. on September 9, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Centex Destination Properties; Location: The project is located in West Galveston Bay and adjacent wetlands, near the west end of Galveston Island, approximately 1.7 miles east of San Luis Pass, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: San Luis Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters) for the project site: Zone 15; Easting: 296143; Northing: 3222242. Approximate UTM Coordinates in NAD

27 (meters) for the mitigation site: Zone 15; Easting: 296143; Northing: 3222242. Project Description: The applicant proposes to dredge and fill wetlands adjacent to West Galveston Bay for the construction of a 12-acre, 300+ slip marina with floating docks, access channel, kayak trail, ancillary development, and residential housing. The project includes the fill of 3.03 acres of wetlands and the dredging of 10.02 acres of wetlands and unvegetated bay bottom. The dredged material from the marina and channel will first be used onsite to raise the grade of the developed project site. Future maintenance dredged material will be temporarily placed in a dedicated leveed placement area, dewatered, and hauled to another upland location or used for beach nourishment if the material is suitable. The applicant proposes to set aside in preservation 39.51 acres of wetlands and uplands within the project area and an additional 29.97 acres composed of wetlands and uplands near San Luis Pass. CCC Project No.: 05-0384-F1; Type of Application: U.S.A.C.E. permit application #23863 are being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200503303

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: August 9, 2005

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Comptroller of Public Accounts

Notice of Contract Amendment

Pursuant to Chapter 403 and Chapter 2155, §2155.083, Texas Government Code and Chapter 111, and §111.0045, Texas Tax Code the Comptroller of Public Accounts (Comptroller) announces this notice of amendment of the existing Master Agreement for Professional Services (Master Agreement) between the following Contractors and the Comptroller resulting from RFQ 167h.

Effective either May or June 2004 as applicable, the Comptroller, and the Contractors entered into Master Agreements for Professional Services resulting from RFQ 167h. The initial term of the Master Agreement was from either May or June 2004 through August 31, 2005. The Master Agreements were amended in August, 2005 in order to extend their terms from the initial termination date on August 31, 2005 until August 31, 2006. The Master Agreements, by their terms, allow for one-year extensions of the Master Agreements to be exercised one year at a time. The thirteen (13) amendments below reflect the exercise of the first of two such one-year extensions. The Comptroller intends to post further notices of amendment for additional contract amendments now pending.

For further information, please contact: Pamela Smith, Deputy General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 475-0498, fax: (512) 475-0973, or by e-mail at contracts@cpa.state.tx.us.

Contract Amendment with D. Smith Consulting, 418 Sonora Dr., Garland, Texas 75042 Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Louis A. Sanchez, 1319 Pine Mills Dr., Richmond, Texas 77469. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Christy Gokeler, 9327 Pearsall Drive, Houston, Texas 77064. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Blythe Corporation, 3002 Sugar Maple, Friendswood, Texas 77546. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Cherise D. Collins, 17011 Driver Ln., Sugar Land, Texas 77478. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Dibrell P. Dobbs d/b/a State Tax Consulting Group, 3220 Elkhart Court, Arlington, Texas 76016. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Tarrant & Bulgherini, PC, 7109 Yucca Dr., Galveston, Texas 77551-1725. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Nicole Y. Thomas, 5414 Cactus Forest, Houston, Texas 77008. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with AJM State Tax Consulting, 6912 La Cadena, El Paso, Texas 79912. Examinations may be assigned in $60,000

or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Ruby Veronica Barnes, 10120 Tantarra Dr., Burleson, Texas 76028. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with, State and Local Tax Group LLC, 308 Cooper Dr., Hurst, Texas 76053. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Davis & Davis Professional Services Firm, 3920 Willowbend Drive, The Colony, Texas 75056. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006.

Contract Amendment with Kelton Brown, 3002-58th. Street, Lubbock, Texas 79413. Examinations may be assigned in $60,000 or $75,000, increments or packages but no contract examiner shall have more than $300,000 in fees from examination packages at any one time during the Master Agreement term as extended. The term of the Master Agreement is extended from its initial termination on August 31, 2005 until August 31, 2006

TRD-200503252
William Clay Harris
Assistant Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 5, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/08/05 - 08/14/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/08/05 - 08/14/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200503304
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 9, 2005

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East Texas Council of Governments

Request for Proposals for Worker Training Initiative

This Request for Proposals to interested entities is filed under Government Code 2254.

The East Texas Workforce Development Board is responsible for oversight of state and federally funded training, employment, and childcare services in a fourteen county area around Longview and Tyler. As the administrative unit for this Board, the East Texas Council of Governments (ETCOG) is soliciting proposals for lease space in Longview, Texas to house its local East Texas Workforce Center.

Office space can be from an existing structure or a build-to-suit and leasing arrangement. The structure should have a minimum of 25,000 square feet of heated and cooled space with 250 parking spaces. The final contract will be negotiated to include any needed renovations.

Businesses or organizations wanting to receive a Request For Proposals (RFP) package should inquire by letter, fax, or email to East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Daniel Pippin. The fax number for ETCOG is (903) 983-1440 or email daniel.pippin@twc.state.tx.us. Questions regarding the RFP process can be addressed by calling (903) 984-8641.

A bidders conference will be held on Monday, August 15, 2005 at 1:30 p.m. at the offices of the East Texas Council of Governments. The deadline for receipt of proposals is Tuesday, September 13, 2005 at 5:00 p.m. CDT.

TRD-200503228
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: August 3, 2005

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Coastal Transport Co., Inc., Docket No. 2003-0246-PST-E on 07/29/2005 assessing $1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The City of Henrietta, Docket No. 2003-1552-MWD-E on 07/29/2005 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Triangle Business, Inc. dba Honey Stop 22, Docket No. 2003-1224-PST-E on 07/29/2005 assessing $17,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at 512/239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michal K. Williams, Docket No. 2004-0001-LII-E on 07/29/2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jenkins Management L.L.C. dba Dr. Gleem Car Wash, Docket No. 2003-0912-PST-E on 07/29/2005 assessing $2,160 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Lyons, Staff Attorney at 512/239-6996, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monte Cole dba Coles One Stop, Docket No. 2003-1108-PST-E on 07/29/2005 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woodridge Limited Partnership, Docket No. 2003-0435-MWD-E on 07/29/2005 assessing $4,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at 817/588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2003-1185-AIR-E on 07/28/2005 assessing $47,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Moderna, Inc., Docket No. 2003-1355-MLM-E on 07/29/2005 assessing $17,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Lyons, Staff Attorney at 512/239-6996, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M and Y Corporation dba Texaco Metro Mart, Docket No. 2004-0172-PST-E on 07/29/2005 assessing $3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at 512/239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Production Company LP, Docket No. 2004-0333-AIR-E on 07/28/2005 assessing $324,072 in administrative penalties with $64,814 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Minaldi dba Timerlane Water System, Inc., Docket No. 2004-0542-PWS-E on 07/29/2005 assessing $998 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at 512/239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John Grohman, Docket No. 2004-0564-MSW-E on 07/29/2005 assessing $7,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ann Skowronski, Staff Attorney at 512/239-2497, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2004-0572-AIR-E on 07/28/2005 assessing $75,920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 133 and 141, Docket No. 2004-0598-MLM-E on 07/29/2005 assessing $12,500 in administrative penalties with $2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Santa Anna, Docket No. 2004-0612-PWS-E on 07/29/2005 assessing $5,220 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at 512/239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Hertz Corporation, Docket No. 2004-0653-PST-E on 07/29/2005 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Transcontinental Gas Pipe Line Corporation, Docket No. 2004-0682-AIR-E on 07/28/2005 assessing $3,125 in administrative penalties with $625 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sari M. Yousef dba Savannah Food & Deli, Docket No. 2004-0692-PST-E on 07/29/2005 assessing $14,400 in administrative penalties with $2,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control and Improvement District No. 1, Docket No. 2004-0793-MWD-E on 07/29/2005 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at 512/239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Livingston Texaco, L.L.C. dba Livingston Texaco, Docket No. 2004-0808-PST-E on 07/29/2005 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at 817/588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gilberto and Apolonia Rodriguez dba Rods Quick Stop, Docket No. 2004-0899-PST-E on 07/29/2005 assessing $7,000 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at 512/239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Marsh Rice University, Docket No. 2004-0912-AIR-E on 07/28/2005 assessing $4,876 in administrative penalties with $975 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 210/403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hamlin, Docket No. 2004-0934-PWS-E on 07/29/2005 assessing $530 in administrative penalties with $106 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Teppco Crude Oil, LLC, Docket No. 2004-0947-AIR-E on 07/28/2005 assessing $3,959 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Hardie Building Products, Inc., Docket No. 2004-0994-IHW-E on 07/28/2005 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at 512/239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Conroe Crown Oaks, Ltd., Docket No. 2004-1045-WQ-E on 07/29/2005 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rock Crushers, Inc., Docket No. 2004-1070-WQ-E on 07/29/2005 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rusk, Docket No. 2004-1084-MWD-E on 07/29/2005 assessing $4,625 in administrative penalties with $925 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ashfaque & Saiqa, Inc dba Rylie One Stop, Docket No. 2004-1113-PST-E on 07/29/2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Osborn Stone Company, Inc. dba A & A Stone Company, Docket No. 2004-1134-WQ-E on 07/29/2005 assessing $39,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ann Skowronski, Staff Attorney at 512/239-2497, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kraft Foods Global, Inc., Docket No. 2004-1166-AIR-E on 07/28/2005 assessing $5,200 in administrative penalties with $1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Domco Products Texas, L.P. dba Tarkett Texas, Docket No. 2004-1186-AIR-E on 07/28/2005 assessing $3,420 in administrative penalties with $684 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at 512/239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kiva Oil Company, Docket No. 2004-1187-AIR-E on 07/28/2005 assessing $1,020 in administrative penalties with $204 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nixon, Docket No. 2004-1221-MWD-E on 07/29/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cushing, Docket No. 2004-1229-MWD-E on 07/29/2005 assessing $7,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Troy Brown dba Foam Zone Car Wash, Docket No. 2004-1260-IWD-E on 07/29/2005 assessing $2,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DSM Nutritional Products, Inc., Docket No. 2004-1271-AIR-E on 07/28/2005 assessing $1,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gene Gilley, Docket No. 2004-1273-MSW-E on 07/29/2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ann Skowronski, Staff Attorney at 512/239-2497, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRG Enterprises, Inc. dba Chevron 7-4757, Docket No. 2004-1317-PST-E on 07/29/2005 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R. J. Smelley Company, Inc. dba R. J. Smelley Dairy, Docket No. 2004-1331-AGR-E on 07/28/2005 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pak America, Inc. dba Best Food 5, Docket No. 2004-1339-PST-E on 07/29/2005 assessing $2,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210/403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dupre' Transport, Inc., Docket No. 2004-1357-PST-E on 07/29/2005 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William A. Spry dba Knob Hill Plumbing, Docket No. 2004-1403-SLG-E on 07/29/2005 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sandra Phelps dba Avery 7-11 Incorporated, Docket No. 2004-1419-PST-E on 07/29/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding APG&Z Inc. dba McKinney Food Store, Docket No. 2004-1428-PST-E on 07/29/2005 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at 512/239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tassie Bailey, III AKA Timothy Bailey dba Bailey Garbage Service, Docket No. 2004-1432-MLM-E on 07/29/2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ann Skowronski, Staff Attorney at 512/239-2497, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Wanjura dba Wanjura Feed Lot, Docket No. 2004-1437-AIR-E on 07/28/2005 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carolyn Owens, Docket No. 2004-1452-AGR-E on 07/28/2005 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AHC Western Hatters Limited Liability Company dba American Hat Company, Docket No. 2004-1462-AIR-E on 07/28/2005 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 210/403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Younis Khan Khail dba Super Stop 5, Docket No. 2004-1478-PST-E on 07/29/2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at 409/899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dallas, Docket No. 2004-1484-AIR-E on 07/28/2005 assessing $1,540 in administrative penalties with $308 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SemPipe, L.P., Docket No. 2004-1488-AIR-E on 07/28/2005 assessing $28,000 in administrative penalties with $5,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/570-1359, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2004-1527-AIR-E on 07/28/2005 assessing $5,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dwain Modisette dba Mobile Tractor Repair, Docket No. 2004-1552-MSW-E on 07/29/2005 assessing $188 in administrative penalties with $38 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at 512/239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Engle dba Fabens Oil Company dba Freeway Exxon, Docket No. 2004-1553-PST-E on 07/29/2005 assessing $4,920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at 512/239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vopak Terminal Deer Park, Inc., Docket No. 2004-1572-AIR-E on 07/28/2005 assessing $6,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2004-1581-AIR-E on 07/28/2005 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Longenecker, Enforcement Coordinator at 512/239-0968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Newell Recycling Company of El Paso, LP dba Newell Recycling, Docket No. 2004-1584-AIR-E on 07/28/2005 assessing $4,360 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dung Phat, Inc. dba D P Seafood, Docket No. 2004-1585-PST-E on 07/29/2005 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Beyer & Edith Beyer Marital Trust dba Erath County Dairy Sales & Livestock Commission, Docket No. 2004-1610-AGR-E on 07/28/2005 assessing $1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2004-1624-AIR-E on 07/28/2005 assessing $3,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P. dba Diamond Shamrock McKee Plant, Docket No. 2004-1645-MLM-E on 07/29/2005 assessing $18,900 in administrative penalties with $3,780 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UMIA Corporation dba Westside Grocery, Docket No. 2004-1680-PST-E on 07/29/2005 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weir Bros., Inc., Docket No. 2004-1681-MLM-E on 07/29/2005 assessing $3,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rio Hondo, Docket No. 2004-1693-PWS-E on 07/29/2005 assessing $585 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at 512/239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Travis Richardson As Executer of the Estate of Carrell Richardson dba River Oaks Water System, Docket No. 2004-1703-PWS-E on 07/29/2005 assessing $1,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHS Inc., Docket No. 2004-1723-PST-E on 07/29/2005 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at 512/239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Keith Goins, Jr., Docket No. 2004-1752-MLM-E on 07/29/2005 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sultan Momin dba Star Trac, Docket No. 2004-1765-PST-E on 07/29/2005 assessing $2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Whitney Development Company, L.L.C. dba Jac's One Stop, Docket No. 2004-1822-PST-E on 07/29/2005 assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at 512/239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownsville Val-Marts, L.L.C. dba Brownsville Val-Mart 6, Docket No. 2004-1831-PST-E on 07/29/2005 assessing $2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at 512/239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waterside Corporation dba Bayview Marina, Docket No. 2004-1849-PST-E on 07/29/2005 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at 512/239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe Pratt dba Harbour Light Marina, Docket No. 2004-1866-PST-E on 07/29/2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mini-Mix of El Paso, Inc., Docket No. 2004-1876-AIR-E on 07/28/2005 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pampa Concrete Co., Inc., Docket No. 2004-1884-AIR-E on 07/28/2005 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at 512/239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding De La Fuente Enterprises, LLC dba De La Fuente Inc, Docket No. 2004-1896-PST-E on 07/29/2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cedarstone One Investors, Ltd., Docket No. 2004-1914-MWD-E on 07/29/2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Circle K Stores Inc dba Circle K Stores, Docket No. 2004-1917-AIR-E on 07/28/2005 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brian Lucherk, Docket No. 2004-1937-OSI-E on 07/29/2005 assessing $375 in administrative penalties with $75 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dauglas Enterprises, Inc. dba New K & T Quick Stop, Docket No. 2004-1938-PST-E on 07/29/2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Mcnew, Enforcement Coordinator at 512/239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilot Travel Centers, LLC dba Pilot Travel Center 435, Docket No. 2004-1948-AIR-E on 07/28/2005 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at 512/239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paradise Business Inc. dba Handi Plus 37, Docket No. 2004-1952-PST-E on 07/29/2005 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at 409/899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allina Business, Inc. dba Five Star Food Mart, Docket No. 2004-1956-PST-E on 07/29/2005 assessing $1,780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at 512/239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coronado Golf and Country Club, Docket No. 2004-1981-AIR-E on 07/28/2005 assessing $1,020 in administrative penalties with $204 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frazier & Frazier Industries, Inc., Docket No. 2004-1985-AIR-E on 07/28/2005 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell-Citgo Refining, LP, Docket No. 2004-2002-AIR-E on 07/28/2005 assessing $26,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at 512/239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe Adams dba Rolling Hills Convenience Store, Docket No. 2004-2015-PST-E on 07/29/2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at 409/899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charter Roofing Co., Inc., Docket No. 2004-2018-PST-E on 07/29/2005 assessing $13,000 in administrative penalties with $2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 210/403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dupre' Transport, Inc., Docket No. 2004-2046-PST-E on 07/29/2005 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hirani Enterprises Inc. dba Korner Food Store, Docket No. 2004-2060-PST-E on 07/29/2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at 512/239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Imad Abdelgader dba Express Lane Grocery, Docket No. 2004-2087-PST-E on 07/29/2005 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210/403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Farmers Dairies, Ltd. dba Farmers Dairies, Docket No. 2004-2091-AIR-E on 07/28/2005 assessing $1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at 512/239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Schmidt & Sons, Inc., Docket No. 2004-2129-PST-E on 07/29/2005 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millersview-Doole Water Supply Corporation, Docket No. 2005-0057-PWS-E on 07/29/2005 assessing $901 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at 512/239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Midway Independent School District, Docket No. 2005-0107-PST-E on 07/29/2005 assessing $1,690 in administrative penalties with $338 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monirul Islam dba Woodforest Texaco, Docket No. 2005-0161-PST-E on 07/29/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bond Enterprises, Inc. dba Bond's First Stop, Docket No. 2005-0192-PST-E on 07/29/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at 512/239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lamb County Hospital dba Lamb Healthcare Center, Docket No. 2005-0214-PST-E on 07/29/2005 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Baldwin, Enforcement Coordinator at 512/239-1675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Universal Demolishing & Recycling Company, Inc., Docket No. 2005-0744-MLM-E on 07/29/2005 assessing $10,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200503325
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 10, 2005

♦ ♦ ♦

Notice of District Petition

Notices mailed August 5, 2005

TCEQ Internal Control No. 06132005-D03; Sugar Land Ranch Development L.L.C. and Hillsboro Estates L.L.C. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 126 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, International Commercial Bank of China and SHK Pacific, ltd., on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 661.2 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Sugar Land, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 03-11, effective February 18, 2003, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. The Submitted creation application also requested approval of a fire protection plan for the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $20,300,000.

TCEQ Internal Control No. 06162005-D05; Sugar Land Ranch Development L.L.C. and Hillsboro Estates L.L.C. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 127 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, International Commercial Bank of China and Ayala Capital Corp., on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 518.29 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Sugar Land, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 03-12, effective February 18, 2003, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. The submitted creation application also requested approval of a fire protection plan for the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $26,900,000. TCEQ Internal Control No. 06132005-D06; Hillsboro Estates, L.L.C. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No.128 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, The International Commercial Bank of China and Ayala Capital Corp., on the property to be included in the proposed District, and the Petitioner have provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 670.72 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Sugar Land, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 03-13, effective February 18, 2003, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities,

plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. The submitted creation application also requested approval of a fire protection plan for the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $44,300,000.

TCEQ Internal Control No. 05262005-D10; Perry Homes and US 59/Reading 108, Ltd. (Petitioners) filed a petition for creation of Municipal Utility District No. 159 of Fort Bend County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, OmniBank, N.A., on the property. to be included in the proposed District, and the Petitioners have provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 148.47 acres located within Fort Bend County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Rosenberg, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-10, effective May 17, 2005, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $7,020,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200503324
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 10, 2005

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 19, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 19, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: DeGar Fuel Systems, Inc.; DOCKET NUMBER: 2004-1264-PST-E; TCEQ ID NUMBERS: 1146 and RN104188198; LOCATION: 23248 Woody Lane, Porter, Montgomery County, Texas; and 3719 Lockwood Drive, Houston, Harris County, Texas; TYPE

OF FACILITY: underground storage tank (UST) contractor; RULES VIOLATED: 30 TAC §334.401(a) (now §334.401(b), adopted to be effective December 17, 2001, 26 TexReg 10378) and TWC, §37.003 and 37.006(e), by installing a UST system at the facility without a TCEQ contractor registration; PENALTY: $1,000; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Khail Enterprises, Inc.; DOCKET NUMBER: 2003-0983-PST-E; TCEQ ID NUMBERS: 42171 and RN101433340; LOCATION: 5304 Highway 3, Dickinson, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3) - (7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain and make available the following: 1) a copy of the California Air Resources Board Executive Order; 2) a record of any maintenance conducted on Stage II equipment; 3) proof of attendance and completion of Stage II training for all employees; 4) a record of the results of testing conducted at the station; and 5) a record of the results of daily inspections conducted at the station; PENALTY: $1,100; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Mohammed Hossain dba Food Plus 2; DOCKET NUMBER: 2004-1261-PST-E; TCEQ ID NUMBERS: 39434; LOCATION: 9206 Bruton Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system on the USTs, within three to six months after the installation of the corrosion protection system and at a subsequent frequency of at least once every three years; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.8(c)(5)(B)(ii) and TWC, §26.346(a), by failing to renew a fuel delivery certificate by timely and proper submission of a new UST storage tank registration and self-certification form to the TCEQ; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ fuel delivery certificate before delivery of a regulated substance into the USTs; PENALTY: $25,380; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200503310

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 9, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 19, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 19, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Bar-G-Store, Inc.; DOCKET NUMBER: 2004-1756-PST-E; TCEQ ID NUMBER: 58800; LOCATION: 1926 State Highway 159, La Grange, Fayette County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: $2,800; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2005-0007-AIR-E; TCEQ ID NUMBER: RN103919817; LOCATION: 9500 Interstate Highway 10 East, Baytown, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §116.115(c), and New Source Review Air Permit Number 37063, Special Condition 1, Maximum Allowable Emission Rate Table, by failing to limit emissions in the Normal Alpha Olefin Unit 1797 from two block valves (EPN F-130) and the SYS-740 Flare (EPN 136), to those limited by the permit; PENALTY: $4,350; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: City of Newark; DOCKET NUMBER: 2003-0014-MWD-E; TCEQ ID NUMBERS: 11626-001 and RN1022687984; LOCATION: on the east bank of Derrett Creek immediately south of Newark Beach Road Bridge, approximately 850 feet west of the intersection of Roger Road and Berke Street, Newark, Wise County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11626-001 (Effluent Limitations and Monitoring Requirements Number 1), and TWC, §26.121(a), by failing to comply with the permitted effluent limits for carbonaceous biochemical oxygen demand, ammonia nitrogen (NH3), and dissolved oxygen (DO); 30 TAC §305.125(1), TPDES

Permit Number 11626-001 (Effluent Limitations and Monitoring Requirements Number 1), and TWC, §26.121(a), by failing to comply with the permitted effluent limits for NH3, five-day biochemical oxygen demand, and DO; PENALTY: $17,500; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Pecan Gap; DOCKET NUMBER: 2003-1258-MWD-E; TCEQ ID NUMBERS: 0010744-001 and RN101608990; LOCATION: 3rd and Main, Pecan Gap, Delta County, Texas; TYPE OF FACILITY: domestic wastewater treatment system; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number 0010744-001, by failing to comply with the permitted effluent limits for total suspended solids and biological oxygen demand; PENALTY: $4,955; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Layne Bales; DOCKET NUMBER: 2005-0098-LII-E; TCEQ ID NUMBERS: 0011247 and RN103987061; LOCATION: 330 Sollock Drive and 700 West Hondo Avenue, Devine, Medina County, Texas; TYPE OF FACILITY: installer of landscape irrigation systems; RULES VIOLATED: 30 TAC §344.58(c), by failing to prohibit someone who was not a licensed irrigator from using his irrigator license; and 30 TAC §334.96, by failing to present customers with a written statement of guarantee for materials and labor furnished in the installation of the irrigation systems at the sites; PENALTY: $1,000; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Mike Campo; DOCKET NUMBER: 2004-1332-MLM-E; TCEQ ID NUMBERS: BH-0016-A and RN102568581; LOCATION: 2467 Hidden Valley Ranch Road, Johnson City, Blanco County, Texas; TYPE OF FACILITY: private residence; RULES VIOLATED: 30 TAC §330.50(c), by dumping unauthorized waste on his property; and 30 TAC §111.201 and THSC, §382.085(b), by conducting unauthorized burning on his property; PENALTY: $1,050; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(7) COMPANY: Sardinia, Inc. dba Market Ace 4; DOCKET NUMBER: 2004-0671-PST-E; TCEQ ID NUMBERS: 8065 and RN102979986; LOCATION: 520 West Florida Avenue, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to equip its USTs with a method of corrosion protection; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection within three to six months after installation and once every three years thereafter; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to check the cathodic protection rectifier at least once every 60 days to determine if the impressed current system is operating properly; 30 TAC §334.8(c)(5)(C), by failing to physically label all tank fill pipes according to the registration and self-certification form; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct Stage II recovery triennial testing within the required time frame; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; and 30 TAC §115.242(5) and THSC, §382.085(b), by failing to, upon discovery of the defects, remove from service all dispensing equipment for which vapor has been impaired until repairs are conducted; PENALTY: $21,150; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: William Head dba Bill Head Enterprise and dba Silver Spur Truck Stop; DOCKET NUMBER: 2002-0561-PST-E; TCEQ ID NUMBERS: 20001 and RN101687978; LOCATION: 2705 North Cage, Pharr, Hidalgo County, Texas; TYPE OF FACILITY: truck stop with retail sales of petroleum products; RULES VIOLATED: 30 TAC §334.50(b)(2)(A) and (i)(III), and TWC, §26.3475(a), by failing to monitor the UST piping in a manner which will detect a release from any portion of the piping system, and by failing to perform an annual performance test on the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.8(c)(4)(B) and (5)(C) and TWC, §26.346(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted to the agency in a timely manner, and by failing to permanently tag, label, or mark the UST system with an identification number that is identical to the UST identification number listed on the UST registration and self-certification form; 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all required records pertaining to the UST system; and TWC, §26.121, by failing to prevent an unauthorized discharge into the surface waters in the state; PENALTY: $30,000; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Wiltshire Brothers, Inc. dba Perfect Lawns of Austin; DOCKET NUMBER: 2003-1538-IRR-E; TCEQ ID NUMBERS: 11163 and RN104067129; LOCATION: 2521 Cuernavaca Drive, Austin, Travis County; TYPE OF FACILITY: lawn maintenance, landscaping, and irrigation company; RULES VIOLATED: 30 TAC §30.5(b), by failing to hold a current irrigator license or employ individuals who hold current licenses prior to advertising or representing to the public that Wiltshire can perform services as an irrigator for which a license or registration was required; PENALTY: $263; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10) COMPANY: Woodward Trading, Inc.; DOCKET NUMBER: 2004-0903-AGR-E; TCEQ ID NUMBER: RN104282892; LOCATION: 1026 Culwell Street, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: unpermitted animal feeding operation; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §321.31(a), by failing to prevent unauthorized discharges of waste-contaminated storm water from an unpermitted animal feeding operation into, or adjacent to, any water in the state; and 30 TAC §321.33(e) (now 30 TAC §321.33(i) and §321.47 (amended to be effective July 15, 2004, 29 TexReg 6652), by failing to adequately locate, construct, and manage waste control facilities required under the technical requirements found in 30 TAC §§321.38 - 321.40; PENALTY: $10,000; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200503309

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 9, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 1, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Dale M. Hightower, Jr.; SOAH Docket No. 582-05-4875; TCEQ Docket No. 2004-0344-WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Dale M. Hightower, Jr. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200503326
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 10, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 4, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Melvin Williams dba Shelby Trash Service SOAH Docket No. 582-05-3122; TCEQ Docket No. 2004-0689-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Melvin Williams dba Shelby Trash Service on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200503327
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 10, 2005

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Office of the Governor

Request for Grant Applications (RFA) for the Coverdell Forensic Sciences Program

The Governor's Criminal Justice Division (CJD) is soliciting applications to improve the quality and timeliness of forensic science and medical examiner services for the federal fiscal year 2006 grant cycle.

Purpose: The purpose of the projects is to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes.

Available Funding: Federal funding is authorized under the Consolidated Appropriations Act, 2005 (Pub. L. No. 108-447). A maximum of $700,000 is available for federal fiscal year 2006 under this RFA.

Required Match: No match is required for this program.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3, and all statutes, regulations, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used for the following services, activities and costs:

(1) expenses for general law enforcement or non-forensic investigatory functions;

(2) construction or renovations costs;

(3) land acquisition;

(4) indirect costs;

(5) administrative costs;

(6) admission fees or tickets to any amusement park, recreational activity or sporting event;

(7) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(8) fundraising;

(9) lobbying;

(10) membership dues for individuals;

(11) promotional gifts;

(12) transportation, lodging, per diem or any related costs for participants when grant funds are used to develop and conduct training;

(13) vehicles or equipment for government agencies that are for general agency use; and

(14) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting).

Eligible Applicants: State agencies and local units of government that operate the following

(1) laboratories currently accredited by the Laboratory Accreditation Board of the American Society of Crime Laboratory Directors, the National Association of Medical Examiners, or other accrediting bodies; and

(2) unaccredited laboratories that have formally applied for accreditation.

Requirements: Applicants must comply with the following:

(1) be accredited or have applied for accreditation;

(2) comply with state regulations and rules for accreditation promulgated by the Texas Department of Public Safety in the *Texas Administrative Code*, Title 37, Part 1, Chapter 28, Subchapter H;

(3) comply with state regulations for reporting misconduct or professional negligence to the Texas Forensic Science Commission, *Texas Code of Criminal Procedure*, Article 38.01;

(4) use generally accepted laboratory practices and procedures established by accrediting organizations or appropriate certifying bodies;

(5) assure that all project personnel comply with 28 C.F.R. Part 22 regarding protection of personally identifiable information that may be collected for research or statistical purposes;

(6) ensure contractors comply with all applicable rules and regulations;

(7) use funds for one or more of the following purposes:

(a) improve the quality and timeliness of forensic services;

(b) eliminate a backlog in the analysis of forensic science evidence, including firearms examinations, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence. A backlog exists if forensic evidence has been stored in a laboratory, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility, and has not been subjected to all appropriate forensic testing because of a lack of resources or personnel;

(c) train, assist, and employ forensic laboratory personnel to eliminate the backlog;

(8) allowable uses of funds are limited to the following:

(a) personnel including overtime, fellowships, visiting scientists, interns, consultants or contracted staff;

(b) computerization including funds to upgrade, replace, lease or purchase computer hardware and software for forensic analyses and data management;

(c) laboratory equipment including the upgrade, replacement, lease or purchase of laboratory or medical examiner equipment and instrumentation;

(d) supplies;

(e) accreditation, including the preparation for laboratory accreditation by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD-LAB), the National Association of Medical Examiners (NAME), or other appropriate accrediting bodies, and the application and maintenance fees charged by accrediting bodies;

(f) education, training, and certification including external and internal training of staff that are directly and substantially involved in providing forensic science or medical examiner services. Training must be designed to improve the quality and/or timeliness of forensic science or medical examiner services and the applicant must demonstrate that the proposed training or certification is directly related to the job position and duties of the individual receiving the training or seeking accreditation.

Project Period: Grant funded projects will begin on November 1, 2005, and will expire on or before August 31, 2006.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's website address at http://www.governor.state.tx.us/divisions/cjd/formsapps/view.

Preferences: Preference will be given to projects that support training and personnel costs.

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before September 16, 2005.

Selection Process: Applications are reviewed by CJD staff members or a group selected by the Executive Director of CJD. CJD will make all final funding decisions based on the requirements established in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3, §3.7.

Contact Person: If additional information is needed, contact Judy Switzer at jswitzer@governor.state.tx.us or at (512) 463-1919.

TRD-200503332
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 10, 2005

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Texas Health and Human Services Commission

Notice of Public Meeting

The Texas Health and Human Services Commission (HHSC) will conduct a public meeting on August 17, 2005, to receive public comment regarding Medicaid payments for physical therapy, occupational therapy, and speech-language-pathology services under Texas Health Steps-Comprehensive Care Program (THSteps-CCP), including Medicaid prospective payment system (PPS) reimbursement methodologies for Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs) and for home health agencies (HHAs). The public meeting will be held on August 17, 2005, at 9:00 a.m., in the Public Hearing Room, Texas Department of Aging and Disability Services (DADS), at 701 West 51st Street, Austin, Texas 78751. Written comments regarding Medicaid payments for THSteps-CCP therapies may be submitted until 5:00 p.m. the day of the meeting. Written comments may be sent by U.S. mail to the attention of Merle Moden, HHSC Rate Analysis for Acute Care Services, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200. Overnight or special delivery mail may be sent, or written comments may be hand delivered, to Mr. Moden, HHSC Rate Analysis for Acute Care Services, Mail Code H-400, Building H of the Braker Center, 11209 Metric Boulevard, Austin, Texas, 78758-4021. Alternatively, written comments may be sent via facsimile to Mr. Moden at (512) 491-1983 or via E-mail: merle.moden@hhsc.state.tx.us.

Persons with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Mr. Moden by August 15, 2005, so that appropriate arrangements can be made.

TRD-200503331
Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 10, 2005

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Public Notice Statement

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 05-003, Amendment Number 700, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. This amendment will apply to the Intermediate Care Facilities for the Mentally Retarded (ICF/MR) program, and it will clarify that, for any individual eligible for Medicare Part D, the cost of any drug, which is in a category that is covered by Medicare Part D, is unallowable for Medicaid cost reporting purposes. This change is being made to keep the ICF/MR program in compliance with federal regulations at 42 CFR §423.906. As of January 1, 2006, these federal regulations will prohibit claiming federal Medicaid matching funds for full-benefit dual eligible individuals for costs of covered Part D drugs, or any cost sharing obligations relating to covered Part D drugs.

In addition, this amendment will: (a) simplify state plan language relating to the reimbursement methodology for the ICF/MR program by

removing details which are not required in a state plan, such as listings of allowable and unallowable costs and descriptions of administrative procedures; and (b) clarify state plan language regarding current practice. These changes are being made to make the state plan for ICF/MR easier to understand.

The proposed amendment is to be effective September 1, 2005. The amendment is not expected to have an impact on the amount of federal matching funds to the state for the ICF/MR program.

To obtain copies of the proposed amendment, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200 or by telephone at (512) 491-1373. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200503320
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 10, 2005

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Public Notice Statement

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 05-004, Amendment Number 701, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. This amendment will extend the effective period for the current nursing facility (NF) and intermediate care facility for the mentally retarded (ICF/MR) rates to August 31, 2007. As a result, NF and ICF/MR rates will remain constant through the end of the 2006-2007 biennium.

This amendment also will modify the state plans for the Primary Home Care Program and the Day Activity and Health Services Program to state that rates for the 2006-2007 biennium will be equal to the rates in effect on August 31, 2003. These changes are being made to conform to Legislative appropriations for these programs for the 2006-2007 biennium.

The proposed amendment is to be effective September 1, 2005. The amendment is not expected to have an impact on the amount of federal matching funds to the state for the NF or ICF/MR programs. It is expected to increase federal matching funds to the state for the Primary Home Care Program and the Day Activity and Health Services Program as follows:

FY 2006

Primary Home Care--$5,324,226

Day Activity and Health Services--$692,749

FY 2007

Primary Home Care--$5,983,274

Day Activity and Health Services--$751,798

To obtain copies of the proposed amendment, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200 or by telephone at (512) 491-1373. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200503330
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 10, 2005

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Department of State Health Services

Designation of Kellum Medical Group as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Kellum Medical Group, 8870 U.S. South Highway 87, San Antonio, Texas 78263. The designation is based on eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200503302
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 9, 2005

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Notice of Public Hearing for the Ambulatory Surgical Centers Rules

The Department of State Health Services (department) will hold a public hearing to take public comments on proposed rules concerning ambulatory surgical centers. The rules, located in 25 Texas Administrative Code, Chapter 135, were published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3542).

The hearing will be held from 10:00 a.m. to 12:00 p.m., on Thursday, August 25, 2005, in the Main Building, Room K-100 (Auditorium), Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756.

Further information may be obtained from Cindy Bednar of the department's Facility Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756, Telephone (512) 834-6648.

TRD-200503301
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 9, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by NORTH AMERICAN TITLE INSURANCE COMPANY, a Foreign Title company. The home office is in Walnut Creek, California.

Application for admission to the State of Texas by CSI LIFE INSURANCE COMPANY, a Foreign Life, Accident and/or Health company. The home office is in Omaha, Nebraska.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200503333
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 10, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of FIRSTCOMP UNDERWRITERS GROUP, INC., a foreign third party administrator. The home office is OMAHA, NEBRASKA.

Application for admission to Texas of CONCERO, INC., (using the assumed name of CONCERO GROUP) a foreign third party administrator. The home office is PORTLAND, OREGON.

Application for incorporation in Texas of INSTITUTION SOLUTIONS I, LLC, (using the assumed name of INSTITUTION SOLUTIONS, LLC), a domestic third party administrator. The home office is RICHARDSON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200503334
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 10, 2005

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Texas Lottery Commission

Instant Game Number 570 "$50,000 Mania"

1.0 Name and Style of Game.

A. The name of Instant Game No. 570 is "$50,000 MANIA". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 570 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 570.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, $$ SYMBOL, STAR SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 570 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
$$ SYMBOL	WIN
STAR SYMBOL	WIN ALL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$

$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 570 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (570), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 570-0000001-001.

L. Pack - A pack of "$50,000 MANIA" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 MANIA" Instant Game No. 570 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 MANIA" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols the players win prize indicated for that number. If a player reveals a "$$" play symbol the player wins prize indicated for that symbol. If a player reveals a star play symbol the player wins all 20 prizes indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45(forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers on a ticket.

C. No duplicate Winning Numbers on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

F. No Your Number will match any Winning Number play symbol when the win all symbol appears on a ticket.

G. The win all symbol will only appear on intended winners as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 MANIA" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 MANIA" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 MANIA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 MANIA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 MANIA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 570. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 570 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	880,000	6.82
$10	400,000	15.00
$15	160,000	37.50
$20	140,000	42.86
$50	80,000	75.00
$100	15,000	400.00
$500	1,200	5,000.00
$1,000	225	26,666.67
$5,000	25	240,000.00
$50,000	7	857,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.58. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 570 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 570, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200503297
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 8, 2005

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, August 24, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Pleasant Homes of Texas Inc. dba Pleasant Homes to hear alleged violations of Sections 1201.357, 1201.358, 1201.354, 1201.356 of the Act and Sections 80.131(b), 80.132(3), 80.180(b) of the Rules by failing to properly install the home, by not complying with the initial report and warranty orders, in a timely manner. SOAH 332-05-6880. Department MHD2005000179-W.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200503314
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: August 9, 2005

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Texas Department of Public Safety

Notice of Public Hearing

The Texas Department of Public Safety, in accordance with Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, is holding a public hearing on August 16, 2005, at 9:00 a.m., in the Texas Department of Public Safety, Texas Highway Patrol Division, Conference Room B, 5805 North Lamar, Austin, Texas.

The purpose of this hearing is to receive comments from all interested persons regarding adoption of Administrative Rules §§4.1, 4.11, 4.13 and 4.16 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles. The proposed rules were published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4314).

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P. O. Box 4087, Austin, Texas 78773-0500.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Major Rogers at (512) 424-2116, three working days prior to the hearing so that appropriate arrangements can be made.

TRD-200503233
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: August 4, 2005

♦ ♦ ♦

Request for Proposal - Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) Grants

INTRODUCTION: The Governor's Division of Emergency Management (GDEM), acting for the State Emergency Response Commission (SERC), is requesting proposals for Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to Cities/Counties representing LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to chemicals, in their use, storage or transit. The U.S. Department of Transportation has made grant money available to enhance communities' readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC in various ways, depending on a community's needs.

ELIGIBLE APPLICANTS: Each proposal must be developed by an LEPC, the membership of which is recognized by the SERC, in cooperation with county and/or city governments. The proposal must be approved by a vote of the LEPC. Each LEPC shall arrange for a city or county to serve as its fiscal agent for management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or authorization to commit funds from the city as appropriate.

BUDGET LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the U.S. Department of Transportation. No less than seventy-five percent of the money granted to the state for planning will be awarded to LEPCs. This is the tenth of a series of annual grant awards, which will be issued through FY 2006. Grants will be awarded based upon population, hazardous materials risk, need, and cost-effectiveness as judged by GDEM. GDEM will fund eighty percent of the total project cost. Twenty percent of the project cost must be borne by the grantee. Approved in-kind contributions may be used to satisfy this contribution. LEPCs must maintain the same level of spending for planning as an average of the past two years, in addition to the grant.

EXAMPLES OF PROPOSALS:

Development, improvement, and implementation of the emergency plans required under the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as exercises, which test the emergency plan. Improvement of emergency plans may include hazard analysis as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian Country, and development and maintenance of a system to keep such information current.

An assessment of the need for regional hazardous materials emergency response teams.

An assessment of local response capabilities.

Conducting emergency response drills and exercises associated with emergency response plans.

Technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

Public outreach about hazardous materials training issues such as community protection, chemical emergency preparedness, or response.

Any other planning project related to the transportation of hazardous materials approved by GDEM.

CONTRACT PERIOD: Grant contracts begin as early as November 1, 2005, and end August 12, 2006.

FINAL SELECTION: The GDEM shall review the proposals. SERC Subcommittee on Planning will make the final selection. The State is under no obligation to award grants to all applicants.

APPLICATION FORMS AND DEADLINE: The "Request for Proposals and Application Package" should be sent via certified/registered mail or other private mail delivery service, requiring a signature to the Texas Department of Public Safety, Governor's Division of Emergency Management, P.O. Box 4087, Austin, Texas 78773-0225. An application may be requested by calling DEM at (512) 424-5985. The original and four copies of the completed application must be received at above address by 5:00 P.M. on October 31, 2005. For more information, please call (512) 424-5985.

TRD-200503305
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: August 9, 2005

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Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Jefferson County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 2, 2005, for a certificate of convenience and necessity for a proposed transmission line in Jefferson County, Texas

Docket Style and Number: Application of Entergy Gulf States, Incorporated for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Jefferson County, Texas. Docket Number 31198.

The Application: The project is designated the Golden Pass LNG Transmission Line Project. The proposed construction is needed to provide 230 kV transmission service to the new Keith Lake 230kV

Substation that will provide electrical service to the Exxon-Mobil proposed Golden Pass LNG Terminal and Pipeline Project in Jefferson County, Texas. The right-of-way width for this project will be approximately 100 feet. The estimated cost for the project is $21,690,000 for the transmission facilities and $6,990,000 for the substation facilities. The estimated date to energize the facilities is April 2008.

This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management program goals and policies.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 16, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31198.

TRD-200503308
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 9, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 4, 2005, IntraLinc filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60300. Applicant intends to relinquish its certificate.

The Application: Application of IntraLinc to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31454.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 24, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31454.

TRD-200503296
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2005

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Notice of Application for Authority to Recover Lost Revenues and Costs of Implementing Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas, an application on July 29, 2005, for authority to recover lost revenues and costs of implementing expanded local calling service pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §§ 55.041-55.048 and P.U.C. Substantive Rule 26.221. A summary of the application follows.

Project Title and Number: Application of Sugar Land Telephone Company for Authority to Recover Lost Revenues and Costs of Implementing Expanded Local Calling Service. Project Number 31432.

Sugar Land Telephone Company requests commission approval to continue a monthly surcharge in the revised amount of $.56 for business lines and $.28 for residential lines, with a Tel-Assistance surcharge at a discount of 65% of the residential surcharge, to each Sugar Land Telephone Company basic local exchange access line, effective October 27, 2005. Sugar Land Telephone Company seeks approval to continue recovering costs and lost revenues associated with all ELCS routes currently in service in Sugar Land Telephone Company's service territory.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Project Number 31432.

TRD-200503232
Adriana Gonzales
Rules Coordinator
Public Utility Commission
Filed: August 4, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 3, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Fones4All Corporation for a Service Provider Certificate of Operating Authority, Docket Number 31449 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance service.

Applicant's requested SPCOA geographic area includes the geographic area of Texas currently served by SBC Communications, Incorporated, and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 24, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31449.

TRD-200503294
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 4, 2005, for a service

provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of FiberLight, LLC for a Service Provider Certificate of Operating Authority, Docket Number 31459 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, and Fractional T1 services.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 24, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31459.

TRD-200503306
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 9, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 5, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Telrite Corporation for a Service Provider Certificate of Operating Authority, Docket Number 31460 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas, Verizon Southwest, and United Telephone Company of Texas, Incorporated, doing business as Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 24, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31460.

TRD-200503307
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 9, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule 26.214

Notice is given to the public of the filing on August 4, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC study on or about August 15, 2005.

Docket Title and Number: Central Telephone Company of Texas, Inc. d/b/a Sprint Application For Approval of LRIC Study to Introduce Custom Calling Services Associated with Call Forwarding Pursuant To P.U.C. Substantive Rule 26.214, Docket Number 31452.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31452. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 31452.

TRD-200503275
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule 26.214

Notice is given to the public of the filing on August 4, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC study on or about August 15, 2005.

Docket Title and Number: United Telephone Company of Texas, Inc. d/b/a Sprint Application For Approval of LRIC Study to Introduce Custom Calling Services Associated with Call Forwarding Pursuant To P.U.C. Substantive Rule 26.214, Docket Number 31453.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31453. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 31453.

TRD-200503276
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on August 3, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Sprint Communications Company L.P.'s (Sprint) request for one 1,000-block in the Pinehurst Rate Center.

Docket Title and Number: Petition of Sprint Communications Company L.P. for Number NXX Request in Pinehurst Rate Center. Docket Number 31450.

The Application: Sprint submitted a petition to the Pooling Administrator (PA) to provide it with one 1,000-block in the Pinehurst Rate Center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 24, 2005. Hearing and Speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31450.

TRD-200503295
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2005

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Texas A&M University System Health Science Center

Consultant Contract Notification

Request for Proposal

The Texas A&M University System Health Science Center (A&M System Health Science Center) requests proposals from qualified respondents that can conduct a thorough and accurate Health Insurance Portability and Accountability Act (HIPAA) Security Risk Analysis of its enterprise network.

Description: The Texas A&M University System Health Science Center is a large academic medical institution that provides education, research, and support to students, faculty, physicians and other medical professions and organizations at the local, state and federal level. The HSC processes, retains and transports a considerable amount of electronic protected health information through information systems which are subject to the protections afforded by the Health Insurance Portability and Accountability Act (HIPAA). The HSC has a central campus in College Station, Texas, that supports four primary entities and remote campuses in Houston, Corpus Christi, McAllen, Temple and Dallas. Additionally, the Rural and Community Health Institute (RCHI), one of the entities in College Station, will soon be handling protected health information from rural Texas healthcare facilities. One of the first requirements under the HIPAA Security Rule is to accomplish a thorough and accurate risk analysis that supports the development of an implementation strategy and remediation risks. The focus of this initial analysis will be on the HSC's primary enterprise network and the College Station Campus sites. It will also review connectivity and data flow to remote campuses, affiliates, but will not include an on-site assessment of those entities at this time.

The A&M System Health Science Center invites proposals in response to this Request for Proposal (RFP) from qualified firms for the provision of such an analysis (to begin September 1, 2005) under the direction and supervision of the A&M System Health Science Center Office of Finance and Administration.

The President of the A&M Health Science Center has affirmed the necessity of these consulting services for assistance in this analysis.

Responses: Responses to this RFP should include at least the following information:

a description of the firm's qualifications for performing the requested services, including the firm's past experience in the above referenced matters as they relate specifically to institutions of higher education and rural hospitals;

the names and experience of the professionals assigned to work on such matters;

the availability of the lead consultant and others assigned to the project;

fee information (either in the form of hourly rates for each partner, associate, technical advisor who may be assigned to perform services to the A&M System Health Science Center, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses;

a comprehensive description of the procedures used by the firm to complete the analysis in a timely and cost-effective manner;

representation that should the firm be selected by the A&M System Health Science Center to provide the analysis, the firm will enter into a separate consulting agreement; and

confirmation of willingness to comply with policies, directives and guidelines of the A&M System and A&M System Health Science Center as well as the Attorney General of the State of Texas. Qualified firms must be able to exhibit compliance with House Bill No. 1, 78th Legislature, Regular Session, Article IX, Section 6.23, or as superseded, concerning matters against the State of Texas or any of its agencies.

a confirmation that preference will be given, all other considerations being equal, to a consultant whose principal place of business is within the state or who will manage the contracted project entirely from its office within the state;

Format and Person to Contact: Three copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8.5 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. The copies should be sent by mail or delivered in person, marked on the envelope **"Response to Request for Proposal"** and addressed to:

The Texas A&M University System Health Science Center

Office of Finance and Administration

HUB & Procurement Services

John B. Connally Bldg

301 Tarrow Street, Suite 619

College Station, Texas 77840-7896

Evaluation: Proposals sent in response to this RFP will be evaluated in light of several criteria. The criteria are expertise, prior experience related to higher education and rural healthcare facilities, procedures for providing timely and cost-effective services, and reasonableness of fees.

Deadline for submission of Response: All proposals must be received by the Office of Finance and Administration of the A&M System Health Science Center at the address set forth above not later than 5:00 p.m., September 1, 2005.

TRD-200503315

Keely B. Dunn
Management Analyst
Texas A&M University System Health Science Center
Filed: August 9, 2005

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Texas Department of Transportation

Notice of Public Hearing on Proposed Restrictions on Use of State Highway

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on a proposed restriction initiated by the department establishing lane use restrictions for certain classes of vehicles on Interstate Highway 10 in Harris County from Waco Street in the city of Houston to Spur 330 in Harris County.

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601-25.604, the department is proposing to initiate a lane use restriction applicable to trucks with three or more axles, as defined in Transportation Code, §541.201, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane on Interstate Highway 10 from Waco Street in the city of Houston extending eastward and ending at Spur 330 in Harris County. The proposed restriction will supercede the city of Houston's Ordinance No. 2000-770 by removing the time restrictions, and extend the lane use restriction on Interstate Highway 10 to Spur 330 in Harris County.

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.603(f)-(h), the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601-25.604, and will hold a public hearing to receive comments on the proposed restriction. The hearing will be held at 4:00 p.m. on Monday, August 29, 2005, at the following location:

Texas Department of Transportation

Houston District Headquarters, Main Conference Room

7721 Washington Avenue

Houston, Texas 77007

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 3:30 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Gary K. Trietsch, P.E., District Engineer, Houston District, Texas Department of Transportation, P.O. Box 1386, Houston, Texas 77251-1386. The deadline for receipt of written comments is 5:00 p.m. on September 19, 2005.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact James Keener at (713) 802-5185 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact James Keener.

TRD-200503335
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 10, 2005

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Notice of Public Hearing on Proposed Restrictions on Use of State Highway

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on a proposed restriction initiated by the department establishing lane use restrictions for certain classes of vehicles on U.S. Highway 290 in Harris County from IH 610 in the city of Houston to Mueschke Road in Harris County.

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601-25.604, the department is proposing to initiate a lane use restriction applicable to trucks with three or more axles, as defined in Transportation Code, §541.201, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane on U.S. Highway 290 from IH 610 in the city of Houston extending westward and ending at Mueschke Road in Harris County.

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.603(f)-(h), the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601-25.604, and will hold a public hearing to receive comments on the proposed restriction. The hearing will be held at 4:00 p.m. on Tuesday, August 30, 2005, at the following location:

Texas Department of Transportation

Houston District Headquarters, Main Conference Room

7721 Washington Avenue

Houston, Texas 77007

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 3:30 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Gary K. Trietsch, P.E., District Engineer, Houston District, Texas Department of Transportation, P.O. Box 1386, Houston, Texas 77251-1386. The deadline for receipt of written comments is 5:00 p.m. on September 19, 2005.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact James Keener at (713) 802-5185 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact James Keener.

TRD-200503336
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 10, 2005

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University of Houston

Consultant Contract Award Notice

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston furnishes this notice of consultant contract award. The consultant will provide services in the form of a campus safety study relating to improved student, parent and staff employee perceptions. Requests for proposals were filed in the June 17, 2005 issue of the *Texas Register*.

The contract was awarded to the Bratton Group, LLC, 160 East 84th Street, Suite 5E, New York, NY 10028, for a total amount of NTE $47,240.

The beginning date of the contract is July 20, 2005 and the ending date is August 20, 2005.

For further information, please call (713) 743-0580.

TRD-200503231
Brian S. Nelson
Executive Director and Associate General Counsel
University of Houston
Filed: August 4, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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